

# **APPENDIX I**

## **TAB A**

**In The Matter Of:**

*Tammy Kitzmiller, et al. v.  
Dover Area School District, et al.*

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*Michael Baksa  
March 9, 2005*

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**Tammy Kitzmiller, et al. v.  
Dover Area School District, et al.**

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March 9, 2005**

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[1] IN THE COURT OF COMMON PLEAS OF  
[2] DAUPHIN COUNTY, PENNSYLVANIA  
[3] TAMMY KITZMILLER,  
[4] et al.,  
[5] Plaintiffs  
[6] Civil Action No. 04-CV-2688  
[7] vs.  
[8] DOVER AREA SCHOOL DISTRICT, et al.,  
[9] (JUDGE JONES)  
[10] Defendant  
[11] Deposition of: MICHAEL BAKSA  
[12] Taken by : Plaintiffs  
[13] Date : March 9, 2005; 9:30 a.m.  
[14] Place : 200 One Keystone Plaza  
Harrisburg, Pennsylvania  
[15] Before : Susan D. Kashmere, RPR  
[16] Reporter - Notary Public  
[17] APPEARANCES:  
[18] PEPPER HAMILTON, LLP  
By: ERIC ROTHSCHILD, ESQ.  
[19] For - Plaintiffs  
[20] THOMAS MORE LAW CENTER  
[21] By: PATRICK GILLEN, ESQ.  
[22] For - Defendants  
[23] ALSO PRESENT:  
[24] BARRIE CALLAHAN  
[25]

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## STIPULATION

[2] It is hereby stipulated by and between  
[3] counsel for the respective parties that  
[4] sealing, filing, and certification are hereby  
[5] waived; and that all objections, except as to  
[6] the form of the question, are reserved to the  
[7] time of trial.

[8] MICHAEL BAKSA, called as a witness, being  
[9] duly sworn, testified as follows:

## EXAMINATION

BY MR. ROTHSCILD:

[12] Q: Good morning, Mr. Baksa. I've introduced  
[13] myself off the record, but let me introduce  
[14] myself on the record. My name is Eric  
[15] Rothschild. I'm from the law firm of Pepper  
[16] Hamilton, LLP and we represent the plaintiffs  
[17] in the lawsuit that has been captioned  
[18] Kitzmiller, et al versus Dover Area School  
[19] District, et al, and your deposition is being  
[20] taken in this matter. Do you understand that?

[21] A: Yes.

[22] Q: One of the other things you told me off the  
[23] record is that your wife is a court reporter.  
[24] So you probably have more understanding of the  
[25] process than many witnesses who are being

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[1] deposited, but let me ask you, have you ever  
[2] personally been deposed?

[3] A: No.

[4] Q: I'm just going to go over some of the general  
[5] instructions that we give witnesses when  
[6] they're first taking part in this process.

[7] I'm going to be asking you questions and  
[8] you'll be giving answers and Sue, the court  
[9] reporter here, will be taking down those  
[10] questions and answers and creating a  
[11] transcript.

[12] In order for that process to work, one  
[13] thing I need you to do is answer in words as  
[14] opposed to with gestures or nonverbal  
[15] utterances. Do you understand that?

[16] A: Yes.

[17] Q: I sometimes tend to talk a little quickly. I'm  
[18] going to try and slow that down. We will be  
[19] more successful in creating a clear transcript  
[20] if both of us speak at a pace that is not too  
[21] fast.

[22] The other thing we can do to help the  
[23] court reporter and make the transcript clear is  
[24] for you to wait until my questions are done  
[25] before you answer. Often we can anticipate

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[1] what each other is asking or saying, but we  
[2] need to make sure that each of us allow the  
[3] other to finish what they're saying. So if you  
[4] could let me finish my questions and I will do  
[5] my best to let you finish your answers. Can we  
[6] agree on that?

[7] A: Yes.

[8] Q: If you don't understand any of my questions,  
[9] please let me know. This is not an endurance  
[10] test. If you need a break during the process  
[11] to use the rest room, to get a drink, to talk  
[12] to your lawyer, that's fine, just please let me  
[13] know and I'm happy to take a break and I may  
[14] initiate breaks myself. Okay?

[15] A: Fine.

[16] Q: Did you do anything to prepare for this  
[17] deposition?

[18] A: I did review documents that were requested in  
[19] the first and second production from the court.  
[20] So I did review those documents.

[21] Q: When did you do that?

[22] A: Over the past two weeks or so.

[23] Q: Did any of those documents refresh your  
[24] recollection about events relating to the  
[25] biology curriculum or purchase of the biology

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[1] book?

[2] A: I'd say yes.

[3] Q: Did you do anything else to prepare?

[4] A: No.

[5] Q: Did you meet with counsel at any time?

[6] A: Yes.

[7] Q: And when did you do that?

[8] A: We met yesterday and we spoke over the phone.

[9] Q: How long did you meet yesterday?

[10] A: Approximately from 10:30 until 5:30 with a  
[11] break for lunch.

[12] Q: Is Mr. Gillen the attorney you met with?

[13] A: Yes.

[14] Q: Was anybody else present when you met?

[15] A: No.

[16] Q: Was anybody else participating by phone?

[17] A: No.

[18] Q: You said you also spoke to him on the phone.  
[19] When was that?

[20] A: Probably maybe a week or so ago.

[21] Q: And was that to prepare for the deposition?

[22] A: Yes. And to prepare answers to the  
[23] interrogatives.

[24] Q: Interrogatories?

[25] A: Yes.

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[1] Q: How long did you speak with counsel then?

[2] A: Well, a total — probably around 13 hours.

[3] Q: That's a lot of time. Had you also met with  
[4] counsel for the school district in advance of  
[5] the depositions of Mr. Nilsen, Mr. Buckingham,  
[6] Mr. Bonsell and Ms. Harkins?

[7] A: No.

[8] Q: And when I speak about counsel for defendants  
[9] I'm not referring just to Mr. Gillen, but any  
[10] lawyers representing the Dover School District.

[11] A: I didn't meet with them.

[12] Q: Mr. Baksa, have you ever heard any member of  
[13] the Dover School Board of Directors express a  
[14] desire to have creationism taught in Dover High  
[15] School?

[16] A: No.

[17] Q: And you're sure of that?

[18] A: Um-hum.

[19] Q: That's a yes?

[20] A: Yes.

[21] Q: Where do you live?

[22] A: 36 Oak View Drive, Strasburg, Pennsylvania.

[23] Q: And how long have you lived there?

[24] A: Since '89.

[25] Q: Are there any newspapers that you regularly

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[1] read?

[2] A: The Lancaster New Era.

[3] Q: I'm sorry, the Lancaster?

[4] A: New Era.

[5] Q: Anything else?

[6] A: No.

[7] Q: What was the last grade of education you  
[8] completed?

[9] A: At this point I've completed all of my  
[10] doctorate course work for my doctorate and the  
[11] next step would be for me to take comprehensive  
[12] exams and do my dissertation.

[13] Q: And where did you take your doctorate classes?

[14] A: Currently I'm finishing up at Widener.

[15] Q: What's the last level of education you  
[16] completed or the last degree you received?

[17] A: That would be my graduate, master's.

[18] Q: And what is that degree in?

[19] A: Education administration.

[20] Q: Where did you get that degree?

[21] A: Lehigh University.

[22] Q: What year? You can estimate if you don't know  
[23] exactly.

[24] A: I believe it's around — it was right when we  
[25] moved. So it was around '89.

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- [1] Q: And where did you receive your undergraduate  
[2] degree?  
[3] A: Moravian College.  
[4] Q: What year was that?  
[5] A: That would be '83, 1983.  
[6] Q: And what was your degree in?  
[7] A: English and communications, education, teaching  
[8] certificate.  
[9] Q: Have you had any science education after high  
[10] school?  
[11] A: I would have at Indiana University of  
[12] Pennsylvania.  
[13] Q: Is that a university you attended before  
[14] completing your degree at Moravian?  
[15] A: Yes.  
[16] Q: How many years did you go to school there?  
[17] A: I believe three.  
[18] Q: And do you remember what science courses you  
[19] took at Indiana University?  
[20] A: I took a science course in my freshman year. I  
[21] really don't remember whether it was chemistry  
[22] or general science.  
[23] Q: But that course would have been the last  
[24] science course you took at any time?  
[25] A: Right.

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- [1] Q: Are you currently the assistant superintendent  
[2] of Dover Area School District?  
[3] A: Yes.  
[4] Q: How long have you held that position?  
[5] A: This is my third year.  
[6] Q: What are your duties and responsibilities as  
[7] assistant superintendent?  
[8] A: Primarily I'm responsible for curriculum, the  
[9] strategic plan, professional development and  
[10] federal programs titled to Title 5.  
[11] Q: What do you mean by strategic plan?  
[12] A: Strategic plan is a plan every six years that  
[13] has to be submitted to the state that includes  
[14] specific goals that the district sets for  
[15] itself and its special education plan and its  
[16] professional development plan and its  
[17] technology plan.  
[18] Q: Prior to becoming assistant superintendent at  
[19] Dover can you describe your work history after  
[20] college, just, you know, where did you work and  
[21] what did you do?  
[22] A: I taught for six years at Penn Ridge High  
[23] School in Perkasi, Pennsylvania.  
[24] Q: What did you teach?  
[25] A: I taught English.

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- [1] Q: After that?  
[2] A: After that I was an assistant principal at  
[3] Octorara Middle School, grades five through  
[4] eight and I was there for four years. After  
[5] that I was an assistant principal at Governor  
[6] Mifflin High School.  
[7] Q: How long was that?  
[8] A: That also was four years. And then after that  
[9] I was five years principal at Conestoga Valley  
[10] High School in Lancaster.  
[11] Q: And then you came to Dover?  
[12] A: Yes.  
[13] Q: Have you attended any courses or lectures or  
[14] seminars relating to the subjects of evolution,  
[15] intelligent design or creationism?  
[16] A: I attended a Messiah evening presentation on  
[17] the teaching of evolution in the high school  
[18] classroom.  
[19] Q: When was that?  
[20] A: I think that was my first year there,  
[21] 2002/2003.  
[22] Q: First year at Dover?  
[23] A: Yes.  
[24] Q: And what is Messiah?  
[25] A: Messiah is a college.

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- [1] Q: Where is that?  
[2] A: I think it's — I attended it in Harrisburg,  
[3] but I'm not sure where Messiah is.  
[4] Q: Is Messiah a sectarian or demoninational  
[5] school? I mean, is it affiliated with a  
[6] religion or have a religious mission?  
[7] A: I believe it is.  
[8] Q: And do you know what that mission is?  
[9] A: No.  
[10] Q: You understand it to be a Christian college?  
[11] A: I wouldn't know that.  
[12] Q: Why did you go to that seminar?  
[13] A: Dr. Nilsen brought the presentation to my  
[14] attention and recommended that I attend.  
[15] Q: And how long was that presentation?  
[16] A: Maybe an hour.  
[17] Q: Was there any discussion of intelligent design?  
[18] A: No. Primarily the lecture was the history of  
[19] the controversy on teaching evolution.  
[20] Q: And what did you learn at that lecture?  
[21] A: Well, I did take notes on it, but, you know, I  
[22] learned the historical interactions, the  
[23] controversy and how it was dealt with publicly  
[24] and in the private school and some of the  
[25] players and some of the books that were written

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[1] or used in expounding different views.  
[2] And then there was a little bit of a Q and  
[3] A after that about what implications there  
[4] might be for the teaching in the public high  
[5] schools.  
[6] Q: Did anybody state a position about what the  
[7] implications were?  
[8] A: I believe the presenter put forth the view that  
[9] he thought it would be okay to present the  
[10] controversy on evolution, you know, to students  
[11] at public schools.  
[12] Q: And when he used the term controversy on  
[13] evolution, what did you understand him to mean?  
[14] A: Just that there are other theories out there  
[15] that would have different time lines, account  
[16] for different origins other than Darwin.  
[17] Q: Did you have an understanding of what those  
[18] other theories were?  
[19] A: They didn't go into that.  
[20] Q: And when you talk about other time lines, what  
[21] do you mean by that or what did you understand  
[22] him to mean?  
[23] A: He talked about creationism and talked about  
[24] the different definitions of that with younger  
[25] theories and different takes on those time

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[1] lines, specifically creation, how it might have  
[2] occurred.  
[3] Q: Did Mr. Nilsen say why he thought it might be a  
[4] good idea for you to go?  
[5] A: No.  
[6] Q: Did you ask him?  
[7] A: No.  
[8] Q: Prior to attending this session did you  
[9] understand there to be any controversy about  
[10] evolution?  
[11] A: Where?  
[12] Q: Anywhere. I mean, you used the term  
[13] controversy on evolution. Did you have any  
[14] understanding that there was a controversy  
[15] about evolution prior to attending that  
[16] session?  
[17] A: At Dover or in general?  
[18] Q: Anywhere.  
[19] A: I think in general I had a sense that evolution  
[20] was a sensitive topic in the public schools.  
[21] Q: Did you have an understanding that there was a  
[22] controversy in the scientific community about  
[23] the scientific merits of the theory of  
[24] evolution?  
[25] A: No.

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[1] Q: Do you have an understanding now that there's a  
[2] controversy about the scientific merits of the  
[3] theory of evolution?  
[4] A: Yes.  
[5] Q: You talked about this concept of a time line,  
[6] that there might be a — is it fair to say that  
[7] they were expressing the concept that there  
[8] might be a younger earth than might be  
[9] otherwise understood?  
[10] A: Yes.  
[11] Q: Was it your understanding that this presenter  
[12] was recommending that that concept could be  
[13] taught in the public schools?  
[14] A: Yes.  
[15] Q: Did you understand what the source of this  
[16] concept that there is a — or let me backtrack.  
[17] When he was referring to a younger earth did  
[18] you have an understanding of what he meant by  
[19] that?  
[20] A: No.  
[21] Q: Did you understand him to be associating that  
[22] with the length of time suggested by the Bible?  
[23] A: I don't remember him mentioning that.  
[24] Q: Did he describe what the source of this  
[25] understanding of a younger earth was?

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[1] A: I think he cited an author and a work, a book.  
[2] Q: Do you remember who that was?  
[3] A: No.  
[4] Q: Is it your practice to attend the public  
[5] meetings of the Dover Area School Board?  
[6] A: Yes.  
[7] Q: And do you also attend any — is it your  
[8] practice to attend executive sessions of the  
[9] board?  
[10] A: Yes.  
[11] Q: Do you attend all of the executive sessions of  
[12] the board?  
[13] A: If I'm there, yes.  
[14] Q: What would determine whether you're there?  
[15] A: If I'm available I would be there, yes.  
[16] Q: And you also attend committee meetings of the  
[17] board?  
[18] A: Some.  
[19] Q: Curriculum committee?  
[20] A: Yes.  
[21] Q: Am I also correct in understanding that there  
[22] is separate from the board curriculum  
[23] committee, there's another committee devoted to  
[24] the curriculum that includes board members,  
[25] teachers and members of the community?



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(1) A: Yes.  
(2) Q: And what do you call that committee?  
(3) A: Curriculum advisory committee.  
(4) Q: Do you also attend those meetings?  
(5) A: Yes.  
(6) Q: During all of these meetings that we've just  
(7) listed do you have a practice of taking notes  
(8) during the meeting?  
(9) A: Yes.  
(10) Q: And what is that practice?  
(11) A: For the curriculum advisory committee I take  
(12) notes and publish minutes. For the board  
(13) curriculum meetings I would simply take notes,  
(14) but there are no minutes published.  
(15) Q: And what about for the executive sessions, do  
(16) you take notes there?  
(17) A: No.  
(18) Q: And — go ahead.  
(19) A: On occasion. Generally, no, but sometimes I  
(20) have, yes.  
(21) Q: And at public board meetings do you take notes?  
(22) A: I might take a few notes on the board agenda.  
(23) Q: What happens with the minutes that you publish  
(24) for the curriculum advisory committee?  
(25) A: Those are approved at the next curriculum

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(1) advisory committee meeting and my secretary  
(2) keeps them.  
(3) Q: You can correct me if you think I'm wrong about  
(4) this, but it does not appear to me that there  
(5) were any curriculum advisory committee minutes  
(6) produced by defendants in this litigation. You  
(7) actually reviewed what was being produced by  
(8) the school district, correct?  
(9) A: Document 1.  
(10) Q: What?  
(11) A: Document 1 is the minutes from the curriculum  
(12) advisory committee, Document 1.  
(13) MR. GILLEN: If you look at the document  
(14) Bates stamped 1.  
(15) A: Those are the minutes.  
(16) BY MR. ROTHSCHILD:  
(17) Q: I'm going to show you the document that was  
(18) marked 1 in the defendant's production. Is  
(19) that what you're referring to?  
(20) A: No.  
(21) Q: Can you describe for me what these minutes  
(22) would look like?  
(23) A: They're titled Curriculum Advisory Committee  
(24) Minutes. I believe the date is April 10th.  
(25) And then you'll see numbered —

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(1) Q: Let me show you another document, because I do  
(2) see one document that might fit that  
(3) description. I'm going to show you a document  
(4) that was marked 5 in the production. Is that  
(5) what you are referring to as curriculum  
(6) advisory council minutes?  
(7) A: Yes.  
(8) Q: Again, my memory is not perfect, but I think  
(9) that is the only example of a document of this  
(10) type that was in the production. Is that  
(11) consistent with what you recollect?  
(12) A: I think so.  
(13) Q: Is that because there were — did you review  
(14) all the curriculum advisory council minutes to  
(15) determine whether there was discussion about  
(16) the biology curriculum issue in them?  
(17) A: Yes.  
(18) Q: And this was the only one that you located?  
(19) A: Yes.  
(20) Q: How often does the curriculum advisory council  
(21) meet?  
(22) A: Once a year, sometimes more.  
(23) Q: What are the circumstances that cause a meeting  
(24) to be scheduled of this committee?  
(25) A: Typically, the curriculum advisory committee

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(1) meets during April and at that time any  
(2) curriculum and textbooks that are being — or  
(3) any curriculum initiatives that are being  
(4) presented for implementation for the following  
(5) year, those would be reviewed by the committee.  
(6) And those people responsible for those  
(7) curriculum pieces would present and explain  
(8) whatever program or textbooks that they're  
(9) looking at.  
(10) Q: Was a meeting of the curriculum advisory  
(11) council held at any time in the fall of 2004  
(12) when the modification to the biology curriculum  
(13) was being considered?  
(14) A: No.  
(15) Q: Is there a reason with a change in curriculum  
(16) being presented that this committee was not  
(17) convened?  
(18) A: Typically, the committee only meets in April.  
(19) There's been instances in the past where a  
(20) curriculum might not be prepared in time for  
(21) April, it might be finished in June and then it  
(22) would be presented to the board without the  
(23) curriculum advisory committee reviewing it.  
(24) Q: So they're cut out of the process then?  
(25) A: Typically they meet in April to review. So if



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[1] something came later to that something might go  
[2] to the board without having gone before the  
[3] curriculum advisory committee.  
[4] Q: And that was the case with the biology  
[5] curriculum, the change in the biology  
[6] curriculum?  
[7] A: The curriculum committee did not meet to review  
[8] the language and the changes in the biology  
[9] curriculum. However, the committee did receive  
[10] the proposed changes by e-mail and by mail and  
[11] was asked to respond with any comments to those  
[12] changes and I would present those to the board.  
[13] Q: You described your practice of taking notes,  
[14] for example, at the board curriculum committee  
[15] and occasionally in executive meetings and the  
[16] public board meetings. What do you with those  
[17] notes?  
[18] A: File them.  
[19] Q: Do you ever discard them?  
[20] A: From which meetings?  
[21] Q: All of them. Let's start with the board  
[22] curriculum committee.  
[23] A: The board curriculum committee notes, I would  
[24] keep those. Any notes I would take at a board  
[25] meeting, typically those are just to-do notes

[1] up and review them and there would be no  
[2] meeting. If there were any questions, then  
[3] either I or the teachers who created the  
[4] documents would answer those questions for the  
[5] board. So there's no regularly scheduled  
[6] meeting of the board curriculum committee as a  
[7] part of the curriculum review process.  
[8] Q: Let me just see if I can summarize what you've  
[9] said and you tell me if this is correct. As a  
[10] general matter when a curriculum is being  
[11] developed is it developed by the administration  
[12] and the teachers?  
[13] A: Primarily the teachers.  
[14] Q: Okay. And as a general practice, the teachers  
[15] submit those materials through you to the board  
[16] curriculum committee?  
[17] A: Correct.  
[18] Q: And the board curriculum committee — does the  
[19] board curriculum committee have to indicate  
[20] their approval?  
[21] A: They review the documents and if there's any  
[22] questions that they would have, then we try to  
[23] get that board curriculum committee answers so  
[24] that they're prepared to make a recommendation  
[25] to the full board for approval or not.

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[1] that I'd have to follow up on the next day.  
[2] Generally those are discarded. Depending on  
[3] what the document is in executive session, I  
[4] may discard it or keep it.  
[5] Q: For your notes of the board curriculum  
[6] committee, did you go back and look at those  
[7] notes in order to produce responsive documents  
[8] in this litigation?  
[9] A: From the board curriculum?  
[10] Q: Your notes of the board curriculum committee  
[11] meetings.  
[12] A: I looked at those.  
[13] Q: And produced what you thought related to the  
[14] biology curriculum? Did you produce those to  
[15] counsel?  
[16] A: Oh, yes.  
[17] Q: How often does the board curriculum committee  
[18] meet?  
[19] A: This is my third year. My understanding is  
[20] that typically what would happen is as a  
[21] curriculum is proposed both the curriculum  
[22] that's going to be implemented and the  
[23] textbooks would be made available to the board  
[24] curriculum committee.  
[25] Typically they might pick those documents

[1] Q: But ultimately the product of their review is a  
[2] recommendation to the board?  
[3] A: Yes.  
[4] Q: And generally there's not a meeting for this to  
[5] occur, the board curriculum committee simply  
[6] looks at the documents and makes their  
[7] recommendation?  
[8] A: Correct.  
[9] Q: Do they convene in order to discuss among  
[10] themselves what their recommendation is?  
[11] A: I wouldn't know that.  
[12] Q: How do they communicate their recommendation to  
[13] the full board?  
[14] A: If there are no questions or concerns and the  
[15] chair of the board curriculum committee is okay  
[16] with the textbooks or the curriculums that are  
[17] being recommended, then that would be  
[18] communicated through me to the superintendent  
[19] for that item to be placed on the board agenda  
[20] for approval. And then at the board meeting  
[21] the board curriculum chairperson would make a  
[22] motion to approve.  
[23] Q: Other than the biology curriculum, the specific  
[24] change to the biology curriculum, which is the  
[25] subject of this litigation, can you think of a

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[1] recall.  
[2] Q: The principal was invited?  
[3] A: I believe it was principal and staff for family  
[4] consumer science. I'm not sure that we met  
[5] about the Fundamentals of Success curriculum.  
[6] Q: Were faculty members invited to board  
[7] curriculum committee meetings for any  
[8] discussion of the purchase of a biology book or  
[9] the change to the biology curriculum that is  
[10] the subject of this litigation?  
[11] A: Yes.  
[12] Q: And do you know on how many occasions?  
[13] A: I think there were at least three meetings.  
[14] Q: When were those?  
[15] A: I believe — or four meetings, actually. There  
[16] would have been a meeting in September of 2003;  
[17] June, 2004; July, 2004 and August, 2004.  
[18] Q: We'll go back to those meetings, but let me ask  
[19] some other questions first.  
[20] Other than the biology textbook that was  
[21] purchased in 2004 have you been involved in the  
[22] purchase of other textbooks for Dover School  
[23] District?  
[24] A: The first year I came the curriculum cycle was  
[25] science, family consumer science and gifted.

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[1] The second year was to be language arts and  
[2] that was put off a year and so language arts is  
[3] this year.  
[4] Q: And what is the process for the selection and  
[5] purchase of books at Dover School District?  
[6] A: Typically either myself or Dr. Butterfield, the  
[7] language arts supervisor, would work with  
[8] teachers to select the books from different  
[9] publishers and those books then may be piloted  
[10] in the year before purchase.  
[11] And typically by February the teachers  
[12] would have made a recommendation for a  
[13] particular textbook for purchase for the  
[14] following year.  
[15] Q: Other than the biology textbook, has there ever  
[16] been, in your tenure, an instance where the  
[17] school board rejected the recommendation of a  
[18] textbook? And I'm not suggesting that happened  
[19] with the biology textbook, but just putting  
[20] that issue aside.  
[21] A: The books that were not purchased in the  
[22] curriculum cycle would have included science  
[23] books, chemistry and biology and I believe  
[24] there's about four textbooks in family consumer  
[25] science. Those were not purchased.

[1] Q: They were recommended by the faculty, but not  
[2] purchased?  
[3] A: Correct.  
[4] Q: Other than the biology textbook, what was the  
[5] reason that those books were not purchased?  
[6] A: Economic reasons.  
[7] Q: And that's the only reason?  
[8] A: Yes.  
[9] (P Deposition Exhibit Number 8 PREVIOUSLY  
[10] marked for identification.)  
[11] BY MR. ROTHSCHILD:  
[12] Q: I'm going to hand you something that we  
[13] previously marked as P-8 in this case and it is  
[14] the Biology Curriculum Guide. And I've turned  
[15] you to the page where the intelligent design  
[16] item is found.  
[17] Does the language at the bottom of that  
[18] page stating, Students will be made aware of  
[19] gaps/problems in Darwin's Theory and of other  
[20] theories of evolution including, but not  
[21] limited to intelligent design and Note: The  
[22] Origins of Life is not taught, is that the  
[23] language that was added to the biology  
[24] curriculum through the resolution that the  
[25] board passed on October 18th, 2004?

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[1] A: Yes.  
[2] Q: The language that the curriculum item refers to  
[3] intelligent design, what do you understand  
[4] intelligent design to mean as used in this  
[5] curriculum item?  
[6] A: Well, from what I've read, and I'm not a  
[7] scientist or a science teacher, but I believe  
[8] intelligent design is a theory that holds that  
[9] examining life and finding the complexities and  
[10] the mechanisms that work in it, that that  
[11] complexity is hard to account for by chance.  
[12] Q: Anything else?  
[13] A: No.  
[14] Q: How did you gain that understanding? You said  
[15] things you've read. What are you referring to?  
[16] A: I would get literature, either e-mail or  
[17] through the mail, that might speak to  
[18] intelligent design and, also, read the book Of  
[19] Pandas and People.  
[20] Q: When you talk about literature you received and  
[21] communications through the mail, is there a  
[22] time period in which you received those  
[23] materials?  
[24] A: Primarily I'd say I was receiving them through  
[25] the 2004/2005 school year.

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[1] Q: After the resolution was passed or before?  
[2] A: Before.  
[3] Q: Why were these materials sent to you or how  
[4] were they sent to you?  
[5] A: I don't know.  
[6] Q: People just randomly sent them to you?  
[7] A: Yes.  
[8] Q: You didn't solicit them?  
[9] A: Correct.  
[10] Q: You weren't given them by members of the school  
[11] board?  
[12] A: They might have given me some documents.  
[13] Q: Are there particular members of the school  
[14] board who gave you documents?  
[15] A: Mr. Buckingham gave me the book Of Pandas and  
[16] People and he also gave me some videos.  
[17] Q: Did Mr. Buckingham give you anything else?  
[18] A: Not that I remember.  
[19] Q: When I asked you your understanding of  
[20] intelligent design you said I'm not a scientist  
[21] or a science teacher. Why did you feel that  
[22] was an important point to make?  
[23] A: I don't understand.  
[24] Q: Why did you say that? Why does it matter that  
[25] you're not — I asked you what your

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[1] understanding was of intelligent design and you  
[2] said — you gave me an understanding and you  
[3] said it was based on things you had read and  
[4] you qualified it by saying I'm not a scientist  
[5] or a science teacher. Why did you say that?  
[6] A: I was thinking at Lehigh University there's a  
[7] professor, Dr. Behe, who has written a work, I  
[8] think it's Darwin's Black Box, something like  
[9] that, and I think he would be more qualified to  
[10] explain the scientific portion of intelligent  
[11] design than I would.  
[12] Q: Okay. Do you think a science teacher would be  
[13] able to understand it better?  
[14] A: Only if they — our teachers, in conversations  
[15] with them, they would say — or have said to me  
[16] that their training for teaching would be the  
[17] theory of evolution according to Darwin. I  
[18] don't know if they would have any other course  
[19] work that would allow them to teach other  
[20] theories.  
[21] Q: Do you feel qualified to assess whether  
[22] intelligent design is a sound scientific  
[23] concept?  
[24] A: I would really defer to teachers on that.  
[25] Q: Is there a particular type of training or

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[1] education that you think you would need to be  
[2] qualified to assess whether intelligent design  
[3] is sound science?  
[4] A: Certainly I would like to do — I would think I  
[5] would need to hear authorities in the field and  
[6] read works on it.  
[7] Q: Do you feel, though, you would need a  
[8] particular educational background or training  
[9] in order to make an assessment of the  
[10] scientific merits of intelligent design?  
[11] A: Well, my background is language arts and my  
[12] responsibility is for Curriculum K to 12 and  
[13] other than Dr. Butterfield handling language  
[14] arts K to 12, I am responsible for making some  
[15] judgment, even with the background I have, in  
[16] all the curriculum areas.  
[17] Q: And do you feel qualified to make a judgment  
[18] about whether a particular concept is  
[19] scientifically sound before you put it in the  
[20] curriculum to teach students?  
[21] A: I didn't put it in the curriculum.  
[22] Q: Do you feel that you need to have some kind of  
[23] education or training to assess the soundness  
[24] of a particular concept, the scientific  
[25] soundness of a concept?

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[1] A: Generally teachers write curriculum. The  
[2] content pretty much is dictated by the state  
[3] standards and we stick to that. So in  
[4] consultation with the teachers we would make  
[5] that decision together.  
[6] Q: So would you say that you defer to the  
[7] expertise of the teachers in whatever subject  
[8] matter of a curriculum is being discussed?  
[9] A: I would.  
[10] Q: You said you read Pandas. When did you do  
[11] that?  
[12] A: Sometime after July, 2004.  
[13] Q: And that was after it was provided to you by  
[14] Mr. Buckingham?  
[15] A: Yes.  
[16] Q: Did you feel that you understood Pandas?  
[17] A: I didn't understand the science of it and some  
[18] of the references they made to the science.  
[19] Q: Did you ever discuss the content of Pandas with  
[20] any school board member?  
[21] A: No.  
[22] Q: When was the first time you heard of  
[23] intelligent design?  
[24] A: Probably sometime after — or around June, 2003  
[25] — or 2004.

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[1] Q: After June or it could have been in June?  
[2] A: It could have been in June, yeah.  
[3] Q: Do you remember the circumstances in which you  
[4] heard about intelligent design? Was it, for  
[5] example, a public school board meeting, a  
[6] discussion with a school board member or  
[7] otherwise?  
[8] A: I don't.  
[9] Q: Do you remember anything about the substance of  
[10] what you heard the first time you heard about  
[11] it?  
[12] A: No.  
[13] Q: The first time you heard about it, was it in  
[14] the context of the Dover Area High School  
[15] biology curriculum?  
[16] A: I don't remember that.  
[17] Q: When was the first time you heard of the book  
[18] Of Pandas and People?  
[19] A: When Bill gave it to me, Mr. Buckingham.  
[20] MR. ROTHSCHILD: Let me mark this document  
[21] as P-9.  
[22] (P Deposition Exhibit Number 9 marked for  
[23] identification.)  
[24] BY MR. ROTHSCHILD:  
[25] Q: Do you recognize the document we've marked as

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[1] P-9?  
[2] A: Yes.  
[3] Q: Is this a memorandum that you received on or  
[4] around April 1st, 2003 from the principal,  
[5] Trudy Peterman?  
[6] A: Yes.  
[7] Q: Could you review this document and let me know  
[8] whether there's anything in it that you —  
[9] well, review the document and let me know  
[10] whether there's anything in it you think is  
[11] incorrect.  
[12] A: Okay. There are a number — just the first two  
[13] pages or do you want me to do the rest?  
[14] Q: I think we can probably just look at the first  
[15] two pages for purposes of my question.  
[16] A: There are a number of errors and inaccuracies.  
[17] Q: Could you describe them?  
[18] A: First, Trudy — Dr. Peterman was not at the  
[19] meeting — was not at the — or was not present  
[20] when I had a conversation with Mrs. Spahr that  
[21] generated this memo.  
[22] I never told Mrs. Spahr that the board  
[23] wanted creationism taught. Dr. Peterman in  
[24] many instances overreacts to instances and  
[25] jumps the gun and I think this is a good

[1] example of that.

[2] My conversation with Bert Spahr was simply  
[3] a heads up that there was still, you know, some  
[4] talk about some board members of presenting  
[5] some alternative theory. I did not say that  
[6] there was creationism, nor did any board member  
[7] ever say to me that they wanted creationism  
[8] taught in the classroom.

[9] Additionally, she talks about creationism  
[10] should still be — Dr. Peterman says I advise  
[11] and continue to mention that creationism is  
[12] another alternate theory of evolution. That's  
[13] Dr. Peterman acting on her own.

[14] The only information I have is that I did  
[15] know that some of our teachers before teaching  
[16] the evolution unit would mention other  
[17] theories. They might mention creationism, but  
[18] there was no — at this point there was no  
[19] directive from the board or administration for  
[20] them to do so.

[21] So the way I reacted to this is I ignored  
[22] this because the board was not putting forth  
[23] any definite plans or content or curriculum to  
[24] be implemented.

[25] Mr. Bonsell at a board retreat, where

[1] there's administrators all around, had, just in  
[2] talking about something, mentioned this 50/50.  
[3] He did not talk to me personally about that,  
[4] nor direct that to happen. And I simply took  
[5] that back to Bert Spahr just to give her a  
[6] heads up that there are board members that are  
[7] still looking at alternatives that are being  
[8] presented.

[9] Q: You've got a lot packaged in here. First of  
[10] all, you said ignored this. Can I take from  
[11] that that you did not respond to Ms. Peterman?

[12] A: Correct.

[13] Q: Verbally or in writing?

[14] A: Correct.

[15] Q: Did you have any follow-up conversation with  
[16] Ms. Spahr in reaction to this memo?

[17] A: That I don't remember, but I would be talking  
[18] to Mrs. Spahr continually anyway as long as  
[19] there was some interest in presenting  
[20] alternative theories and since we were working  
[21] on the science curriculum.

[22] Q: This is a memo from April 1st, 2003 and you  
[23] said — the way you started your answer was  
[24] that there was still some talk about presenting  
[25] an alternative theory. What do you mean still



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[1] some talk? Had there been talk prior to April  
[2] 1st, 2003 about teaching something different in  
[3] the biology curriculum?  
[4] A: During the first year of the science curriculum  
[5] cycle Mr. Bonsell was the chair of the board  
[6] curriculum committee and Mr. Bonsell had  
[7] expressed concerns about the presentation of  
[8] Darwin's theory in the book and the lack of  
[9] alternative theories.  
[10] Q: And do you remember, you know, using this April  
[11] 1st, 2003 as a marker, when he was raising this  
[12] issue?  
[13] A: I remember it being in the fall, early in the  
[14] 2002 school year.  
[15] Q: Now, you said that at a board retreat he raised  
[16] the concept of 50/50. Is this a retreat that  
[17] you were at?  
[18] A: Yes.  
[19] Q: And when he used the word 50/50, what was he  
[20] referring to?  
[21] A: I believe Mr. Bonsell was referring that if we  
[22] spent a day teaching Darwin's theory we should  
[23] spend a day teaching another theory.  
[24] Q: When he said that, what was he talking about?  
[25] MR. GILLEN: Objection to the extent it

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[1] calls for speculation.  
[2] BY MR. ROTHSCHILD:  
[3] Q: What was your understanding of what he was  
[4] talking about?  
[5] MR. GILLEN: Objection, foundation.  
[6] BY MR. ROTHSCHILD:  
[7] Q: You can answer.  
[8] A: I don't know.  
[9] Q: So he says 50/50 one theory and something else  
[10] and you have no idea what he's talking about?  
[11] A: That's correct.  
[12] Q: And he's not using the words intelligent design  
[13] here?  
[14] A: No.  
[15] Q: But in your memory, he also did not use the  
[16] word creation?  
[17] A: That's correct.  
[18] Q: You're sitting here listening to this and you  
[19] have responsibility for a curriculum. Did you  
[20] ask Mr. Bonsell what other possible theories  
[21] are you talking about?  
[22] A: I did have a conversation with him after that.  
[23] Initially I think his concern was just that our  
[24] teachers don't present Darwin's theory as the  
[25] sole theory, make students aware that there are

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[1] other theories out there.  
[2] When I heard this 50/50, that was  
[3] something new, I hadn't heard that before. I  
[4] do remember having a conversation with him  
[5] afterwards trying to clarify that a little bit.  
[6] However, in that conversation Mr. Bonsell  
[7] indicated to me just some of his concerns with  
[8] the presentation of Darwin in the book and some  
[9] of the premises that students might be led to.  
[10] No alternative theory was presented to me by  
[11] Mr. Bonsell.  
[12] I had raised the question that if we're  
[13] presenting an alternative theory and if that  
[14] theory is about the origins of life it becomes  
[15] problematic because whose theory would we  
[16] present and whose story of the origins of life  
[17] would we present. And I never got anything  
[18] directly back from him that this is what we  
[19] should be presenting.  
[20] Q: And when he was using the word other theories,  
[21] did he say other scientific theories?  
[22] A: I don't remember.  
[23] Q: Did you understand him to be referring to other  
[24] scientific theories?  
[25] A: Well, he was speaking about other theories of

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[1] evolution, Darwin's scientific evolution. So  
[2]  
[3] Q: But what else is there and did you ask him that  
[4] question?  
[5] A: No.  
[6] Q: You said that he expressed his concerns about  
[7] some of the premises that students could draw  
[8] from what they were being taught about Darwin's  
[9] theory of evolution. What do you mean by that?  
[10] A: Mr. Bonsell expressed concerns that Darwin's  
[11] theory was presented in the book as a fact and  
[12] as the only theory.  
[13] Q: And why did he have a problem with that?  
[14] MR. GILLEN: Objection, speculation.  
[15] BY MR. ROTHSCHILD:  
[16] Q: Did he say why he had a problem with that?  
[17] A: No.  
[18] Q: You did communicate — I take it this memo is  
[19] correct in referring to the fact that you  
[20] communicated to Ms. Spahr issues being raised  
[21] by a board member. Is that fair?  
[22] A: Yes.  
[23] Q: And was that board member Mr. Bonsell?  
[24] A: Yes.  
[25] Q: And what did you tell Mrs. Spahr?

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[1] A: I really don't recall. I don't think it was a  
[2] long conversation. I really don't remember it  
[3] clearly.

[4] I believe I simply gave her a heads up  
[5] that now I had heard that there might — that  
[6] Mr. Bonsell might be asking for a 50/50 split.  
[7] Really my intent was just to keep her informed,  
[8] to keep her in the loop and let her know that  
[9] at some point, whenever the board would give us  
[10] clear direction about what they might want  
[11] done, we may need to look at that and may need  
[12] to do something.

[13] Q: How did Mrs. Spahr respond to that?

[14] A: Mrs. Spahr was throughout this, from the very  
[15] first instance where she would have heard of  
[16] board concerns with the presentation of  
[17] Darwin's theory is the only theory, I think  
[18] from the very beginning Mrs. Spahr was very  
[19] concerned that creationism would be required to  
[20] be taught in classrooms.

[21] Q: And did she express that to you in this  
[22] discussion in which you reported Mr. Bonsell's  
[23] comments?

[24] A: I don't remember in particular, but Mrs. Spahr  
[25] expressed that concern to me on a number of

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[1] occasions.

[2] Q: When you heard Mr. Bonsell say that he wanted  
[3] some 50/50 split did you have a concern that  
[4] what he wanted taught alongside Darwin's theory  
[5] was creationism or some religious account of  
[6] the origins of life?

[7] A: I don't know. I mean, I didn't know what his  
[8] intentions were.

[9] Q: And just to make sure I understand your answer.  
[10] After you received this memo, you didn't  
[11] respond to Ms. Peterman, correct?

[12] A: Yes.

[13] Q: Do you have any recollection of speaking to Ms.  
[14] Spahr, who also received this memo, about what  
[15] Mrs. Peterman had written about her  
[16] understanding of what you and Ms. Spahr talked  
[17] about?

[18] A: I don't remember doing that.

[19] MR. ROTHSCHILD: Let's take a break.

[20] (Recess taken)

[21] BY MR. ROTHSCHILD:

[22] Q: Mr. Baksa, I asked you the question earlier in  
[23] the deposition about whether any board member  
[24] had expressed his desire that creationism be  
[25] taught at Dover schools and you said no.

[1] Did any board member or the board  
[2] collectively ever ask you or express an  
[3] interest in purchasing a biology book that  
[4] included creationism?

[5] A: No board member ever said that to me directly.

[6] Q: You used the word directly. Why did you say  
[7] that?

[8] A: I believe at the June, 2004 school board  
[9] meeting in talking about our status of the  
[10] selection of the biology book, for the first  
[11] time I believe in — I don't remember the exact  
[12] wording, but I remember Mr. Buckingham  
[13] mentioned creationism and that was the first  
[14] time I heard that. But afterwards I was never  
[15] directed from the board curriculum committee or  
[16] from Mr. Buckingham specifically to look for a  
[17] text with creationism in it.

[18] Q: Without, you know, expecting you to precisely  
[19] quote Mr. Buckingham, what do you remember him  
[20] saying about creationism?

[21] A: I just remember that he said creationism.

[22] Q: Did he say anything about wanting a biology  
[23] text that included creationism?

[24] A: I don't remember that.

[25] Q: You recognize Ms. Callahan, who's in the room?

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[1] A: Yes.

[2] Q: And you understand she's one of the plaintiffs  
[3] in this lawsuit?

[4] A: Yes.

[5] Q: Do you remember ever saying to her that the  
[6] board members — the board wanted a biology  
[7] text that included creationism?

[8] A: No.

[9] Q: I'm going to mark another exhibit as P-10.

[10] (P Deposition Exhibit Number 10 marked for  
[11] identification.)

[12] BY MR. ROTHSCHILD:

[13] Q: You see that on P-10 —

[14] A: Which one?

[15] Q: There's two pages of P-10 and on each page  
[16] there are some handwritten notes that appear to  
[17] say "Given to me by Baksa spring 2004". Do you  
[18] recognize —

[19] MR. GILLEN: Objection, hearsay. Go  
[20] ahead.

[21] BY MR. ROTHSCHILD:

[22] Q: Do you recognize the handwriting on these two  
[23] pages?

[24] A: No.

[25] Q: Do you recognize the documents?

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[1] A: No.  
[2] Q: Do you believe you've ever seen them before?  
[3] A: I don't remember them.  
[4] Q: Is it possible that the handwriting is Jennifer  
[5] Miller's, the biology teacher?  
[6] A: I have no idea.  
[7] Q: Have you seen these documents in the last two  
[8] weeks?  
[9] A: I saw this one.  
[10] Q: Okay. And just to be clear about what you're  
[11] referring to, the document you saw in the last  
[12] two weeks is the one numbered 212?  
[13] A: Yes.  
[14] Q: And the page you do not believe you saw in the  
[15] last two weeks is 213?  
[16] A: Yes.  
[17] Q: And other than seeing 212 over the last two  
[18] weeks, you don't recognize them at all?  
[19] A: That's correct.  
[20] MR. GILLEN: Eric, if I may, it appears  
[21] that we have — I've received two pages like  
[22] this.  
[23] MR. ROTHSCHILD: I'll be glad to give you  
[24] a copy of that. (Handing). Pat, this is one  
[25] of these circumstances where a representation

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[1] about where this document came from, whose  
[2] files — or who provided it to counsel would be  
[3] extremely helpful.  
[4] MR. GILLEN: Yes. And I would be glad to  
[5] say for the record that as we sit here today  
[6] and look at it, the two pages that Mr.  
[7] Rothschild has produced here and marked as  
[8] Plaintiff's Exhibit 10, I myself recognize the  
[9] document Bates stamped 212 and see that the  
[10] next page is Bates stamped 213.  
[11] I can tell Mr. Rothschild that I believe  
[12] these documents were produced by the teachers  
[13] to Dover Area School District and we, in turn,  
[14] produced them to the plaintiffs.  
[15] MR. ROTHSCHILD: Thank you. I'm going to  
[16] mark this document as P-11.  
[17] (P Deposition Exhibit Number 11 marked for  
[18] identification.)  
[19] MR. GILLEN: And before you begin, I'd  
[20] like to say that it also appears to me that  
[21] document Bates stamped 208 was produced to us  
[22] by the teachers and produced to plaintiffs.  
[23] MR. ROTHSCHILD: And just so that the  
[24] record is clear, I'm just going to show counsel  
[25] another version of that document without

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[1] handwriting, which has the Number 1084 on it  
[2] and if you could make a representation about  
[3] whose files that came from that would be  
[4] helpful.  
[5] MR. GILLEN: With respect to the document  
[6] Bates stamped Number 1084, I'm not certain, but  
[7] I tend to believe it was also part of the  
[8] teachers' production.  
[9] MR. ROTHSCHILD: And I'm actually going to  
[10] go ahead and mark that version, which does not  
[11] have handwriting, as P-12.  
[12] (P Deposition Exhibit Number 12 marked for  
[13] identification.)  
[14] BY MR. ROTHSCHILD:  
[15] Q: And if you could keep both in front of you, Mr.  
[16] Baksa. Do you recognize the document in either  
[17] the version marked as P-11 or P-12?  
[18] A: Yes.  
[19] Q: What are the circumstances in which you saw  
[20] this document?  
[21] A: I believe in the search for textbooks that  
[22] teachers were reviewing we were also looking at  
[23] other than mainstream publishers what other  
[24] textbooks there might be out there. And I  
[25] believe I remember our home schooling

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[1] population finding their own textbooks and I  
[2] thought I remembered some of those home  
[3] schoolers using Bob Jones University.  
[4] And I think what I did then is asked my  
[5] secretary if she would go on the website and  
[6] see if she could find what biology textbooks  
[7] Bob Jones University might be using.  
[8] Q: You said we were searching for alternative  
[9] textbooks. Is that — maybe you can read it  
[10] back. If you could read back that last answer.  
[11] (Previous answer read by the court  
[12] reporter)  
[13] BY MR. ROTHSCHILD:  
[14] Q: When you said we were also looking at other  
[15] than mainstream publishers, who's the "we" you  
[16] were referring to?  
[17] A: The teachers and I and the board curriculum  
[18] committee.  
[19] Q: Why were you looking for books from other than  
[20] mainstream publishers?  
[21] MR. GILLEN: Objection to the  
[22] characterization of his answer.  
[23] BY MR. ROTHSCHILD:  
[24] Q: You can answer.  
[25] A: Can you rephrase that?



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[1] Q: Why was the group you just referred to looking  
[2] at books from other than mainstream publishers?

[3] A: Dr. Nilsen had asked me to look at some of the  
[4] books that some of our local parochial schools  
[5] might be using and then he might have even  
[6] mentioned home schoolers, but I would have  
[7] known about Bob Jones from our home schoolers.

[8] So I had Marsha Hake, one of our  
[9] secretaries, contact those schools and we  
[10] provided the list of that to the teachers and  
[11] the board curriculum committee.

[12] Q: Do you know why Mr. Nilsen was asking you to  
[13] look at books from parochial schools?

[14] A: No.

[15] Q: Other than what Mr. Nilsen said to you, did you  
[16] have any conversations with any board member  
[17] about searching for books from parochial  
[18] schools?

[19] A: No.

[20] Q: Did you have an understanding of why you were  
[21] being asked to look for books being used by  
[22] parochial schools?

[23] A: No.

[24] Q: Describe the — let me back up. When did this  
[25] instruction from Mr. Nilsen occur?

[1] Q: And in your mind did you associate home  
[2] schooling education with objectives similar to  
[3] what parochial schools' objectives are?

[4] A: I don't know that I made that connection. It  
[5] was just another source.

[6] Q: On the version that we've marked as P-11 there  
[7] is handwriting on the document. Do you  
[8] recognize that handwriting?

[9] A: No.

[10] Q: Do you remember whether you gave this  
[11] description of the Bob Jones University book to  
[12] the teachers?

[13] A: I might have, but I don't remember doing it or  
[14] when I would have done it.

[15] Q: Do you remember whether you gave this  
[16] description of the Bob Jones University book to  
[17] Mr. Nilsen?

[18] A: No.

[19] Q: Do you remember whether you gave it to the  
[20] board?

[21] A: No.

[22] Q: Did you review the description of the text  
[23] being published by Bob Jones University?

[24] A: Did I read this?

[25] Q: Yes.

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[1] A: Probably sometime after June, 2004.

[2] Q: Tell me what he said to you.

[3] A: To see what books the parochial schools were  
[4] using.

[5] Q: And what did you say in response?

[6] A: I don't remember. I just did it.

[7] Q: So you had no understanding of why you would be  
[8] looking to parochial schools for books to be  
[9] taught to the public Dover Area High School?

[10] A: No one gave me a specific reason.

[11] Q: Did you have any discussion with Mr. Nilsen,  
[12] teachers or board members about that project?

[13] A: No.

[14] Q: In terms of finding out what Bob Jones  
[15] University was publishing, was that an  
[16] investigation that you thought of yourself?

[17] A: That came from to look and see what our home  
[18] schoolers were using. And I don't remember if  
[19] Dr. Nilsen asked me to see what our home  
[20] schoolers or if that was just something I knew  
[21] of and did on my own.

[22] Q: Is there a reason you looked for what home  
[23] schoolers were using as part of an assignment  
[24] to find out what parochial schools were using?

[25] A: It was just another organization.

[1] A: I read this.

[2] Q: And upon reading it what did you do with the  
[3] information you learned?

[4] A: Nothing.

[5] Q: Did you make any recommendations about it?

[6] A: No.

[7] Q: Other than contacting the parochial schools and  
[8] investigating what the home schoolers were  
[9] using did you make any other investigations  
[10] about what biology texts other schools were  
[11] using?

[12] A: The teachers secured other texts from other  
[13] publishers. I attend Curriculum Council, which  
[14] is an organization that has representatives  
[15] from all of the schools. I believe I remember  
[16] asking a couple people just what text they use,  
[17] but I didn't do any type of formal survey.

[18] MR. ROTHSCHILD: Let me mark this as P-13.

[19] (P Deposition Exhibit Number 13 marked for  
[20] identification.)

[21] BY MR. ROTHSCHILD:

[22] Q: Mr. Baksa, do you recognize the document marked  
[23] as P-13?

[24] A: Yes.

[25] Q: And what is that?

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[1] A: Well, I don't know what the handwriting is on  
[2] it or whose it is.

[3] MR. GILLEN: For the record, I object to  
[4] the handwritten notations as hearsay, but go  
[5] ahead.

[6] BY MR. ROTHSCILD:

[7] Q: And when you're referring to the handwritten  
[8] notations, there's handwritten notations up in  
[9] the corner and then there's handwriting under  
[10] the headings. Are you referring to one or the  
[11] other?

[12] A: My secretary produced all of the typewritten  
[13] text and I have no understanding of the  
[14] handwriting.

[15] Q: So in terms of the typewritten text, is that  
[16] the product of your survey of parochial  
[17] schools?

[18] A: Yes.

[19] Q: And what did you do with the information about  
[20] what the parochial schools were teaching?

[21] A: I believe this was presented. I believe it was  
[22] the July, 2004 board curriculum committee with  
[23] the teachers.

[24] Q: And did you make any presentation about what  
[25] you had found?

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[1] A: I handed this document out to those present at  
[2] the meeting and then the teachers had all of  
[3] the texts — I believe the teachers had the  
[4] texts from all the textbook publishers there  
[5] and then made a presentation to the board  
[6] curriculum committee on the pluses and minuses  
[7] of each of the texts and made a recommendation  
[8] to the board curriculum committee.

[9] Q: And what was that recommendation?

[10] A: For Miller and Levine.

[11] Q: Was there any discussion of the other books  
[12] being used by the parochial schools?

[13] A: I don't remember any.

[14] Q: Did it strike you as odd, Mr. Baksa, that you  
[15] were being asked as an assistant superintendent  
[16] in a public school system to survey what  
[17] parochial schools were teaching their students  
[18] in biology?

[19] A: No. They're other schools.

[20] Q: I'm sorry?

[21] A: No, it did not.

[22] Q: It didn't strike you as strange that you were  
[23] — your instruction was about parochial schools  
[24] as opposed to other public schools?

[25] A: Correct.

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[1] Q: You didn't take from that that Mr. Nilsen or  
[2] the school board was interested in finding  
[3] material that was more religious in nature?

[4] A: No one ever said that to me.

[5] MR. ROTHSCILD: Mark this as P-14.

[6] (P Deposition Exhibit Number 14 marked for  
[7] identification.)

[8] BY MR. ROTHSCILD:

[9] Q: Mr. Baksa, the group of documents that we've  
[10] marked as P-14, which are a Bates range of 952  
[11] to 955, they were presented to us in that  
[12] numerical order. I'm not making any  
[13] representation of whether they were actually a  
[14] collective document in their original form.  
[15] Do you recognize these documents?

[16] A: Yes.

[17] Q: And on the first page, which is handwritten  
[18] text on a memo pad "from the desk of Michael R.  
[19] Baksa," is that your handwriting?

[20] A: Yes.

[21] Q: And looking at this, can you tell us when you  
[22] made these handwritten notations on the memo?

[23] A: During the period that we were developing the  
[24] statement that was to be read in class and that  
[25] statement was reviewed by the teachers and

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[1] board members. What 952 is is my notes from a  
[2] telephone conversation with Mr. Buckingham and  
[3] these are — this is language that he would  
[4] have liked to see included in the statement  
[5] that would be read to students.

[6] Q: And then turning to 953, whose handwriting is  
[7] that?

[8] A: I can't say for sure, but it's probably Marsha  
[9] Hake's, the secretary who did the survey at the  
[10] schools.

[11] Q: Turning to 954, whose handwriting is that?

[12] A: From Melanie Window down to Randy Reeve is my  
[13] handwriting. 12.0 or higher reading level, I  
[14] don't know whose handwriting that is.

[15] Q: Who is Melanie Window?

[16] A: I think Melanie Window is involved as an  
[17] administrator in the Tomball School District in  
[18] Texas.

[19] Q: And is she someone you called?

[20] A: Yes.

[21] Q: And why did you call her?

[22] A: They had used the book Of Pandas and People in  
[23] their biology classes.

[24] Q: And did you have a conversation with her?

[25] A: Yes.

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[1] Q: And what did you talk about?  
[2] A: I asked her whether they are still using the  
[3] book in the classes. She informed me that the  
[4] teacher who taught the book — used the book in  
[5] his classes, that that teacher no longer is  
[6] there and she wasn't sure whether the book was  
[7] being used or even if they still had it.  
[8] Q: Did she otherwise discuss whether it was a good  
[9] text to use?  
[10] A: No, I didn't ask her that.  
[11] Q: Did you ask her anything besides are you still  
[12] using it?  
[13] A: No.  
[14] Q: And who is Randy Reeve?  
[15] A: I don't know.  
[16] Q: Did you make any inquiries to anybody about  
[17] whether Pandas was appropriate from a  
[18] readability standpoint for ninth grade  
[19] students?  
[20] A: I'm thinking about your last question. Randy  
[21] Reeve may be the principal. I'm not sure.  
[22] Q: At the Tomball?  
[23] A: Yeah. I'm sorry, could you ask your question?  
[24] Q: Did you at any time do any investigation about  
[25] the appropriateness from a readability

[1] articles about the issue at Dover?  
[2] A: Yes.  
[3] Q: And when did you start that practice?  
[4] A: Our receptionist in our administration  
[5] building, it's her responsibility to pull  
[6] articles about Dover and other educational  
[7] articles on other schools and then to make  
[8] copies to distribute to the office. So the  
[9] practice was already in place for anything to  
[10] come through about us to be read by everyone.  
[11] Q: Earlier in your testimony you indicated you  
[12] remembered Mr. Buckingham using the word  
[13] creationism during meetings in June, 2004,  
[14] correct?  
[15] A: Yes.  
[16] Q: And are you aware that there were quite a few  
[17] articles in the two York papers about the  
[18] meetings in June?  
[19] A: Yes.  
[20] Q: And are those articles you read around the time  
[21] that they were published?  
[22] A: Could you ask that again?  
[23] Q: Yes. These articles written in June about the  
[24] June meetings, did you read those articles  
[25] during June?

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[1] standpoint of Pandas and People for ninth grade  
[2] students?  
[3] A: Yes.  
[4] Q: When did you do that?  
[5] A: I gave the book to Dr. Butterfield to do a  
[6] readability study.  
[7] Q: And did you get a response?  
[8] A: Yes.  
[9] Q: And what did Dr. Butterfield say?  
[10] A: That it was 12th grade or higher.  
[11] Q: And what did you do with that information?  
[12] A: I spoke to teachers about it and I might have  
[13] spoken to board members about it, but I'm not  
[14] sure.  
[15] Q: Turning to 955, do you recognize that  
[16] handwriting?  
[17] A: Yes.  
[18] Q: Whose handwriting is that?  
[19] A: My secretary's, Amy.  
[20] Q: Mr. Baksa, are you aware that there's been a  
[21] lot of reporting about the purchase of the  
[22] biology textbook and the change of the biology  
[23] curriculum in the two York papers?  
[24] A: Yes.  
[25] Q: Have you made it a practice to read newspaper

[1] A: Yes.  
[2] Q: Have you ever asked any reporter to correct  
[3] anything that they reported in the newspaper  
[4] about things that you said?  
[5] MR. GILLEN: Objection, relevance. You  
[6] can answer, Mike.  
[7] A: No.  
[8] BY MR. ROTHSCHILD:  
[9] Q: Never verbally or in writing?  
[10] A: No.  
[11] Q: Have you ever asked any newspaper reporter or  
[12] newspaper to correct anything they reported  
[13] about anything that any school board member  
[14] said?  
[15] MR. GILLEN: Objection, relevance. Go  
[16] ahead.  
[17] A: No.  
[18] BY MR. ROTHSCHILD:  
[19] Q: What about things that were reported about what  
[20] Mr. Nilsen said?  
[21] MR. GILLEN: Same objection.  
[22] A: No.  
[23] BY MR. ROTHSCHILD:  
[24] Q: Have you ever asked a newspaper reporter to  
[25] correct anything they have reported that

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(1) relates to the purchase of the biology textbook  
(2) or the biology curriculum?

(3) MR. GILLEN: Same objection.

(4) A: No.

(5) (P Deposition Exhibit Number 4 PREVIOUSLY  
(6) marked for identification.)

(7) BY MR. ROTHCHILD:

(8) Q: Mr. Baksa, we've compiled a collection of news  
(9) articles relating to the issues in dispute in  
(10) this litigation that was previously marked as  
(11) P-4. And let me represent to you that I — or  
(12) I am not representing to you that this is every  
(13) article written on the subject, but a  
(14) compilation of many articles written on the  
(15) subject.

(16) If you could look at the first article in  
(17) this collection. It's a June 8th, 2004 article  
(18) in the York Dispatch.

(19) A: Do you want me to read it?

(20) Q: I'm going to ask you specific questions about  
(21) the contents of the article and when I ask the  
(22) question if you feel you need to go back and  
(23) read the entire article, you should certainly  
(24) do that.

(25) MR. GILLEN: Eric, for the convenience of

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(1) your question, would it be okay with you if I  
(2) had a standing objection to the newspaper  
(3) articles and statements therein as hearsay?

(4) MR. ROTHCHILD: Yes. I don't agree with  
(5) the objection, but you can have the standing  
(6) objection.

(7) BY MR. ROTHCHILD:

(8) Q: If you turn to the second page of this article,  
(9) four paragraphs down it is reported that Mr.  
(10) Buckingham was said that he was disturbed that  
(11) the book was laced with Darwinism. Do you  
(12) remember him making that statement in public  
(13) school board meetings in June of 2004?

(14) A: I remember Mr. Buckingham saying laced with  
(15) Darwinism. I'm not sure when.

(16) Q: Then the next paragraph refers to a statement  
(17) by a person named Max Pell in which he says,  
(18) creationism is a religious theory; why does it  
(19) have to be taught in biology class.

(20) Do you remember Mr. Pell getting up and  
(21) speaking at a school board meeting on the issue  
(22) of the biology textbook or biology curriculum?

(23) A: No.

(24) Q: Do you remember whether any members of the  
(25) community who spoke at meetings in June asked

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(1) questions or raised concerns about the teaching  
(2) of creationism?

(3) A: I don't remember — no, I don't remember  
(4) creationism being a topic of discussion.

(5) Q: And when you say you don't remember, do you  
(6) believe it did not happen or you just have no  
(7) recollection?

(8) A: I just don't remember.

(9) Q: A couple paragraphs down it says, Buckingham  
(10) said he believes the separation of church and  
(11) state is mythical and not something he  
(12) supports. Do you remember him saying anything  
(13) to that effect at any time?

(14) A: I don't remember that.

(15) Q: Could you turn to the next article? This is a  
(16) June 9, 2004 article from the York Dispatch  
(17) reporting about a school board meeting. And it  
(18) says, Buckingham said the committee would look  
(19) for a book that presented both creationism and  
(20) evolution. Do you remember Mr. Buckingham  
(21) making a statement to that effect?

(22) A: I remember him saying creationism, but I don't  
(23) remember the rest, the context.

(24) Q: When he referred to creationism, was he  
(25) speaking in support of it or in support of the

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(1) teaching of it?

(2) A: I don't remember.

(3) Q: He wasn't saying let's make sure we keep  
(4) creationism out of the school, was he?

(5) A: I remember him saying creationism.

(6) Q: Did he use those words in one meeting or more  
(7) than one meeting?

(8) A: I just remember — I don't know if it was used  
(9) — are you asking me if Mr. Buckingham used the  
(10) word at other meetings?

(11) Q: Yes.

(12) A: I don't remember. I don't remember whether it  
(13) was — whether he used the word creationism in  
(14) other meetings, that I don't remember.

(15) Q: Do you remember whether there was any dialogue  
(16) between Mr. Buckingham and people attending the  
(17) school board meeting on the issue of  
(18) creationism?

(19) A: I remember I believe after the June meeting,  
(20) and I do remember people coming to the board  
(21) meetings to express their views on creationism.

(22) Q: And do you remember who any of those  
(23) individuals were?

(24) A: No. Well, I remember Eric Riddle.

(25) Q: Do you remember, did Eric Riddle — during what

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[1] time period did Eric Riddle speak about  
[2] creationism?  
[3] **MR. GILLEN:** Objection to the  
[4] characterization of his answer.  
[5] **MR. ROTHSCHILD:** In what respect?  
[6] **MR. GILLEN:** That he said Riddle talked  
[7] about creationism.  
[8] **MR. ROTHSCHILD:** Could you read back his  
[9] answer about Eric Riddle, please?  
[10] (Questions and answers, Page 68, Lines 24  
[11] and 25, Pages 69, Lines 1 and 2 read by the  
[12] court reporter)  
[13] **MR. ROTHSCHILD:** I'll withdraw my prior  
[14] question.  
[15] **BY MR. ROTHSCHILD:**  
[16] **Q:** Did Mr. Riddle talk on the subject of  
[17] creationism?  
[18] **A:** I don't remember whether it was creationism or  
[19] intelligent design. I just remember Mr. Riddle  
[20] speaking to the board in support of the board.  
[21] **Q:** And do you remember what time period that was?  
[22] **A:** Sometime after June.  
[23] **Q:** Other than that, you don't remember any citizen  
[24] bringing up the topic of creationism at the  
[25] school board meetings?

[1] accurate.  
[2] **Q:** What about the next paragraph?  
[3] **A:** That's accurate.  
[4] **Q:** And the paragraph I just asked you to look to  
[5] states, We do not address the origins of life.  
[6] The origin of life is left to the personal  
[7] beliefs of each family.  
[8] What did you mean by the term origin of  
[9] life when you said that?  
[10] **A:** In conversations with the teachers and early on  
[11] when we met in September of 2003 with Mr.  
[12] Bonsell, the teachers explained to Mr. Bonsell  
[13] that they did not teach the origins of life,  
[14] that they teach evolution as change over time  
[15] within the species.  
[16] **Q:** So at the time you made the statement it was  
[17] your understanding that origins of life are not  
[18] taught in Dover High School biology class. Is  
[19] that right?  
[20] **A:** Yes.  
[21] **Q:** And, in fact, that practice was memorialized in  
[22] the resolution that was passed on October 18th,  
[23] correct, the resolution included adding the  
[24] text to the curriculum origins of life is not  
[25] taught?

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[1] **A:** Not specifically, no.  
[2] **Q:** Is it possible that that occurred? I mean, do  
[3] you have a firm recollection that no such  
[4] discussion did occur or do you just not  
[5] remember?  
[6] **A:** I don't remember.  
[7] **Q:** In this article there's some — starting about  
[8] seven paragraphs down there's reference to  
[9] yourself, Assistant Superintendent Michael  
[10] Baksa, and it continues for about five  
[11] paragraphs.  
[12] **A:** What page are we on?  
[13] **Q:** We're in the York Dispatch June 9th article on  
[14] the second page and you'll see about seven  
[15] paragraphs down, eight paragraphs down the  
[16] reference to Assistant Superintendent Michael  
[17] Baksa.  
[18] **A:** Okay.  
[19] **Q:** Looking through the paragraphs that refer to  
[20] things you said, do you think it's reported  
[21] accurately?  
[22] **A:** It's accurate that Assistant Superintendent  
[23] Michael Baksa said the current textbook called  
[24] Biology: The Living Science, and the school's  
[25] science curriculum teach evolution, that's

[1] **A:** Correct.  
[2] **Q:** Is it your understanding that intelligent  
[3] design is a theory on the origins of life?  
[4] **MR. GILLEN:** Objection, foundation.  
[5] **A:** That I wouldn't know.  
[6] **BY MR. ROTHSCHILD:**  
[7] **Q:** You read a statement to the biology class on  
[8] January 18th in implementing the change to the  
[9] biology curriculum, correct?  
[10] **A:** Yes.  
[11] **Q:** And in that statement one of the things you  
[12] said to the students is intelligent design is  
[13] an explanation of the origin of life that  
[14] differs from Darwin's view. Is that right?  
[15] **A:** Yes.  
[16] **Q:** If origins of life is not being taught at Dover  
[17] High School why is the fact that intelligent  
[18] design is a theory, an explanation of the  
[19] origin of life being taught to the students?  
[20] **MR. GILLEN:** Objection, calls for  
[21] speculation.  
[22] **BY MR. ROTHSCHILD:**  
[23] **Q:** You can answer.  
[24] **A:** We're not teaching intelligent design.  
[25] **Q:** What do you understand you are doing when you



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[1] made that statement?  
[2] A: We're reading that statement making students  
[3] aware of intelligent design and that there's a  
[4] book in the library, if they wanted to research  
[5] that they could.  
[6] Q: When the statement is read to the students and  
[7] they are being made aware of intelligent  
[8] design, is it your testimony that that is not  
[9] teaching the students?  
[10] A: Yes.  
[11] Q: What do you call that doing?  
[12] A: Making them aware.  
[13] Q: Do you understand the students to be learning  
[14] when that statement is made?  
[15] A: They're learning that they're aware of a book  
[16] in the library.  
[17] Q: So they're learning, but not being taught?  
[18] A: Correct.  
[19] Q: In the news article I was asking you to look at  
[20] a couple of paragraphs down it says, The  
[21] district has not rejected the proposed new  
[22] textbook, Baksa said, but it will continue to  
[23] look for a book that will make everyone happy.  
[24] Was that an accurate characterization of  
[25] what you said?

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[1] A: Yes.  
[2] Q: And when you were referring to the proposed new  
[3] textbook, were you referring to the Miller  
[4] Levine book recommended by the teachers?  
[5] A: Yes.  
[6] Q: And when you said that the district is  
[7] continuing to look for a book that will make  
[8] everyone happy, what did you mean by that?  
[9] A: A book that would be acceptable to the board  
[10] curriculum committee and the teachers.  
[11] Q: What was your understanding of what it would  
[12] take in a book to make everyone happy?  
[13] A: I think the board curriculum committee was  
[14] concerned with the presentation of Darwin and  
[15] so they were examining the chapters that dealt  
[16] with Darwin.  
[17] Q: And what was your understanding of what they  
[18] were concerned about?  
[19] A: That Darwin was taught as a fact and that it  
[20] was overstated as a given with no mention of  
[21] any shortcomings or gaps or problems.  
[22] Q: And did you personally ever review the biology  
[23] textbook to reach your own conclusion about  
[24] whether the book, in fact, did identify gaps or  
[25] shortcomings in the theory?

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[1] A: Yes.  
[2] Q: And what conclusion did you come to?  
[3] A: The 2004 edition of the Miller Levine does  
[4] mention gaps.  
[5] Q: Is that different from earlier versions being  
[6] used by — that were being used by the school  
[7] district?  
[8] A: The 2004 edition of the Miller Levine made a  
[9] number of changes that softened the  
[10] presentation of Darwin.  
[11] Q: So, in fact, the textbook that the teachers  
[12] were recommending did, in fact, address what  
[13] the school board was worried about, whether the  
[14] gaps and shortcomings were being identified?  
[15] MR. GILLEN: Objection to the question.  
[16] It's misleading, characterizes the board's  
[17] position without adequate foundation.  
[18] BY MR. ROTHCHILD:  
[19] Q: You can answer.  
[20] A: The teachers recommended the 2004 Miller Levine  
[21] and the board approved that text.  
[22] Q: And that text does identify gaps, correct?  
[23] A: Yes.  
[24] Q: And shortcomings?  
[25] A: I don't remember the word shortcomings being

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[1] used, but gaps is used.  
[2] Q: Okay. So given that the book identifies gaps,  
[3] is there any reason why the students needed to  
[4] be told separately Darwin's theory has gaps —  
[5] MR. GILLEN: Objection, calls for  
[6] speculation.  
[7] BY MR. ROTHCHILD:  
[8] Q: — in the statement that you read to the  
[9] students on January 18th?  
[10] A: Could you ask that again?  
[11] Q: Yes. If the book identifies gaps in Darwin's  
[12] theory of evolution, why is the district making  
[13] a point to tell the students in a statement  
[14] read before the subject of evolution is covered  
[15] Darwin's theory has gaps?  
[16] MR. GILLEN: Objection, calls for  
[17] speculation.  
[18] A: I was directed to work with the board and the  
[19] teachers to develop a statement that the  
[20] teachers would read to address the concerns  
[21] that Darwin's theory is not taught as a fact,  
[22] that other alternative theories of evolution  
[23] were presented and that students being made  
[24] aware of the book Of Pandas and People and that  
[25] resulted in that statement being — having

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[1] input from the teachers and the board that  
[2] statement being created and read.  
[3] BY MR. ROTHSCILD:  
[4] Q: And so that statement tells students that there  
[5] are gaps in the theory, correct?  
[6] A: I don't have the statement in front of me, but  
[7]  
[8] Q: But what?  
[9] A: Yeah, I don't remember if gaps is in the  
[10] statement.  
[11] Q: All right. We'll return to that. Could you  
[12] turn to the next article, which is a June 9th,  
[13] 2004. In this June 9, 2004 article from the  
[14] York Daily Record, four paragraphs down it  
[15] quotes Mr. Buckingham as saying, It's  
[16] inexcusable to teach from a book that says man  
[17] descended from apes and monkeys. We want a  
[18] book that gives balance to education. Do you  
[19] remember him saying that?  
[20] A: No.  
[21] Q: And then it follows by saying, Buckingham and  
[22] other board members are looking for a book that  
[23] teaches creationism and evolution. Do you  
[24] remember him communicating that?  
[25] A: No.

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[1] Q: Two more paragraphs down it says that Board  
[2] President Alan Bonsell said there were only two  
[3] theories, creationism and evolution, that could  
[4] be taught. Do you remember him saying that?  
[5] A: I think I remember Noah Wenrich saying  
[6] something like that, not Mr. Bonsell.  
[7] Q: At the end of the article it attributes — I'm  
[8] sorry, the second to last paragraph, again, it  
[9] says, Buckingham said he wants a book that  
[10] offers balance between what he said are  
[11] Christian views of creationism and evolution.  
[12] Do you remember him saying that?  
[13] A: No.  
[14] Q: And then the next paragraph he's quoted as  
[15] saying, This country wasn't founded on Muslim  
[16] beliefs of evolution, this country was founded  
[17] on Christianity and our students should be  
[18] taught as such. Do you remember him saying  
[19] that?  
[20] A: Yes.  
[21] Q: What were the circumstances in which he said  
[22] that?  
[23] A: I don't remember when he said that or the  
[24] circumstances. I just remember him saying that  
[25] and hearing that.

[1] Q: You actually heard it yourself?  
[2] A: Yes.  
[3] Q: As a professional in education, Mr. Baksa, do  
[4] you have an understanding of whether it's legal  
[5] for a public school to teach religious concepts  
[6] of creation to students?  
[7] A: I have an understanding of the legal opinion on  
[8] teaching creationism in the classroom and my  
[9] understanding is that that would not be legal.  
[10] Q: And you heard Mr. Buckingham say this country  
[11] was founded on Christianity and our students  
[12] should be taught as such.  
[13] Do you understand what Mr. Buckingham said  
[14] in that statement to be consistent with what a  
[15] public school can legally do?  
[16] A: I really don't know — curriculum is about  
[17] content and without specific content being put  
[18] in front of me I can't make a judgment on  
[19] whether it's legal or not.  
[20] Q: We're reviewing articles in which it's fairly  
[21] regularly repeated that Mr. Buckingham and  
[22] perhaps other school board members were  
[23] expressing their desire that creationism be  
[24] taught alongside evolution and you read  
[25] articles of that nature during this June

[1] period?  
[2] A: I'm sorry?  
[3] Q: We have a lot of articles here. You're welcome  
[4] to flip through more of them, but there are  
[5] articles through the June period about meetings  
[6] of the Dover board in which it is reported that  
[7] Mr. Buckingham specifically expressed — and  
[8] other board members expressed a desire that  
[9] creationism be taught alongside evolution, a  
[10] number of articles like that.  
[11] Do you remember reading a lot of articles  
[12] like that during this June period?  
[13] A: That creationism be taught?  
[14] Q: Reading the articles. I'm not asking you what  
[15] was said. I'm asking you do you remember  
[16] reading the articles?  
[17] MR. GILLEN: Objection. The question is  
[18] vague.  
[19] A: Yeah. Can you restate the question?  
[20] BY MR. ROTHSCILD:  
[21] Q: You said that you read the articles pulled from  
[22] the local papers about things going on in the  
[23] school district, correct?  
[24] A: Yes.  
[25] Q: And I've just shown you a few examples and



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(1) we'll go through a few more where the reporters  
(2) are reporting that the school board or  
(3) individual members of the school board are  
(4) looking for a biology textbook that presents  
(5) creationism or want creationism taught in the  
(6) public schools. Do you remember reading  
(7) articles like that, including the ones I've  
(8) shown you?

(9) A: I don't remember any articles talking about  
(10) teaching creationism in schools. I do remember  
(11) Joe Maldonado talking to me within June and I  
(12) do remember Joe making the assumption that we  
(13) were reading — I remember reading articles by  
(14) him that made the assumption that we were  
(15) looking for a book on creationism, that  
(16) included creationism.

(17) And I remember talking to Joe later when  
(18) finally we chose Miller and Levine and him  
(19) asking me if there is creationism in that book.  
(20) However, neither the teachers, I, nor the board  
(21) curriculum committee never directed, other than  
(22) hearing the words said at the public board  
(23) meeting, the board curriculum committee never  
(24) directed me or the teachers specifically to  
(25) look for a book that had creationism in it.

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(1) Our understanding was that we were looking  
(2) for a book that presented a better balanced  
(3) presentation of Darwin's theory of evolution.

(4) Q: And by better balanced you mean what?

(5) A: Again, that it's not simply presented as a  
(6) fact, that it's not — the evidence isn't  
(7) overstated, that it's not misleading to  
(8) students.

(9) Q: In any of the textbooks you looked at,  
(10) including Miller and Levine, did you read the  
(11) statement evolution is a fact?

(12) A: I don't remember.

(13) Q: I mean, was that — you know, where was that  
(14) concern arising from?

(15) A: It was a concern of — the individual board  
(16) members had expressed that concern to me.

(17) Q: And which individual board members was that?

(18) A: Mr. Bonsell and Mr. Buckingham.

(19) Q: Did they ever point to you anything in any  
(20) textbook in order to demonstrate to you what  
(21) they meant by the statement evolution is being  
(22) presented as a fact?

(23) A: Yes.

(24) Q: And what did they point you to?

(25) A: I don't remember specifically, but I do

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(1) remember Mr. Bonsell reviewing the book and  
(2) returning the book to me with certain pages  
(3) marked that he had concerns with.

(4) I remember Mr. Buckingham creating a list  
(5) of pages in the biology book that he had  
(6) concerns with. So that was what they were  
(7) presenting that they were finding that they had  
(8) concerns with.

(9) Q: And to your knowledge, do Mr. Bonsell or Mr.  
(10) Buckingham or any other school board member  
(11) have the expertise in science to make a  
(12) judgment about whether the textbooks are  
(13) properly presenting scientific knowledge on the  
(14) subject of evolution?

(15) A: I wouldn't know.

(16) Q: Did you ever make any inquiries or  
(17) investigations into what — let me withdraw  
(18) that. Do you understand that there are  
(19) associations and universities that make  
(20) recommendations on the teaching of scientific  
(21) subject matter, National Academy of Science?

(22) A: I'm aware of national science organizations.

(23) Their specific activities I'm not aware of.

(24) Q: In trying to make this assessment about whether  
(25) these textbooks were fairly presenting the

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(1) theory of evolution did you ever avail yourself  
(2) of any resources from organizations like that?

(3) A: No.

(4) Q: So you just went to parochial schools to find  
(5) out what they're teaching?

(6) MR. GILLEN: Objection to the  
(7) characterization of his answer as to who he  
(8) went to to look for advice on the text.

(9) A: Could you ask your question again?

(10) BY MR. ROTHSCHILD:

(11) Q: You didn't go to nationally recognized  
(12) scientific organizations, you just went to  
(13) parochial schools to investigate what should be  
(14) taught?

(15) MR. GILLEN: Same objection to the steps  
(16) he took to investigate the texts.

(17) BY MR. ROTHSCHILD:

(18) Q: You can answer the question.

(19) A: In selecting a text the teachers contacted  
(20) publishers and got their current editions of  
(21) those texts and they reviewed those texts.

(22) In addition to that, we were looking at  
(23) what other texts other parochial schools might  
(24) be using and Dr. Nilsen asked me to get that  
(25) list and I provided that list to the teachers.

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[1] Q: Mr. Baksa, could you turn to the — it's a few  
[2] articles in, to the June 15th, 2004 York  
[3] Dispatch article? Have you found that article?  
[4] A: I think so. 12/31 on the bottom?  
[5] Q: That's right. Do you remember reading this  
[6] article? This is an article by Heidi  
[7] Bernhard-Bubb of the York Dispatch.  
[8] A: Can I read it?  
[9] Q: Sure.  
[10] A: Okay.  
[11] Q: Do you remember reading that article?  
[12] A: Yes.  
[13] Q: And if you could turn to the next article  
[14] behind it, which is a June 15th, 2004 article  
[15] by Joseph Maldonado in the York Daily Record.  
[16] Could you tell me whether you remember reading  
[17] that article?  
[18] A: Can I read it?  
[19] Q: Sure. It's the only way you'll know.  
[20] A: Okay.  
[21] Q: Do you recognize that second article by Mr.  
[22] Maldonado?  
[23] A: Yes.  
[24] Q: It's something you read on or around June 15th,  
[25] 2004?

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[1] A: Yes.  
[2] Q: In both of these articles a statement is  
[3] attributed to Mr. Buckingham, 2000 years ago  
[4] someone died on a cross, can't someone take a  
[5] stand for him. Do you remember Mr. Buckingham  
[6] saying that?  
[7] A: Yes.  
[8] Q: And do you remember him saying that in one of  
[9] these June meetings?  
[10] A: That I don't remember.  
[11] Q: Describe for me what you remember about the  
[12] context of Mr. Buckingham saying that.  
[13] A: I just remember hearing that.  
[14] Q: And —  
[15] A: I don't remember the context.  
[16] Q: And can you put any time frame on when that  
[17] occurred?  
[18] A: No, not really.  
[19] Q: Do you remember whether it was said in  
[20] conjunction with a meeting in which the biology  
[21] curriculum or purchase of biology textbook was  
[22] being discussed?  
[23] A: I don't remember.  
[24] Q: Mr. Baksa, this is a pretty notable statement  
[25] and you're telling me you have no memory of

[1] when it occurred or what it was about?  
[2] A: I remember hearing the statement, but I don't  
[3] remember when it was.  
[4] Q: What was your reaction when you heard this?  
[5] It's a pretty odd thing to be said in the  
[6] middle of a discussion about public school  
[7] activities, isn't it?  
[8] A: I just remember hearing the statement.  
[9] Q: And what? Any reaction to it?  
[10] A: Well, without remembering the context in which  
[11] the statement was made, I don't remember if it  
[12] would have any implications for the district at  
[13] all or for the curriculum at all.  
[14] One of the things, as creationism is being  
[15] talked about Mrs. Spahr and I already have in  
[16] our hands documents about the legal precedence  
[17] of teaching creationism. I also have our  
[18] solicitor's opinion on teaching creationism.  
[19] So there was no formal movement by the  
[20] board to actually do that. They were talking  
[21] about it, it was being brought up by the public  
[22] and being answered, but I was not being asked  
[23] to do anything with that. And the legal  
[24] opinion I had certainly would support the cases  
[25] that had already been heard on that.

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[1] Q: Okay. But you do remember that the board was  
[2] talking about creationism and the public was  
[3] talking about creationism?  
[4] MR. GILLEN: Objection to the  
[5] characterization of his answer, but go ahead.  
[6] A: I remember Bill saying creationism.  
[7] BY MR. ROTHSCHILD:  
[8] Q: And you remember the public talking about it?  
[9] A: Yeah — well, I remember from — if I don't  
[10] have the newspaper articles in front of me  
[11] nothing comes into my head specifically about  
[12] someone other than I do remember Mrs.  
[13] Buckingham getting up there and talking about  
[14] creation as according to the Bible, but other  
[15] than her no one comes to mind as far as  
[16] speaking about creationism.  
[17] Q: And Mrs. Buckingham getting up and speaking  
[18] about it is reported in these newspaper  
[19] articles, correct?  
[20] A: Yes.  
[21] Q: And they're reporting about what she said at a  
[22] meeting in June, correct? That's when these  
[23] were written?  
[24] A: Yeah, I think it was in June when she spoke.  
[25] Q: And did you have an understanding of why she

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[1] was getting up and speaking about teaching  
[2] creationism?

[3] A: No.

[4] Q: Did you understand her to be speaking in  
[5] support of her husband or other members of the  
[6] board who were interested in teaching  
[7] creationism?

[8] A: I don't know why she was talking.

[9] Q: Do you have any reason to doubt what is  
[10] reported in these stories that the  
[11] 2000-years-ago statement was made during a  
[12] meeting in June in which the biology curriculum  
[13] was being discussed?

[14] A: All I could say is I don't remember — I  
[15] remember hearing it, but I don't remember when.

[16] Q: Do you remember ever having discussions with  
[17] members of the board in which anybody said have  
[18] you seen what they're reporting in these  
[19] newspapers, they're getting it all wrong? Do  
[20] you ever remember anybody saying that? Let me  
[21] narrow the question.

[22] Do you remember in terms of these articles  
[23] that are coming out in June anybody reacting to  
[24] this and saying, oh, my God, look what they're  
[25] writing here, they've got it all wrong?

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[1] MR. GILLEN: Objection, relevance.

[2] A: Not specifically. In general I remember  
[3] comments occasionally about how the reporters  
[4] might have characterized an interview with a  
[5] board member or a meeting in which they're  
[6] reporting on, but I couldn't tell you  
[7] specifically.

[8] BY MR. ROTHSCHILD:

[9] Q: So you don't know what, if anything, was being  
[10] discussed as being wrong in the reporting?

[11] A: Right.

[12] Q: In these June meetings — you do recall that in  
[13] these June meetings there was discussion about  
[14] the biology textbook?

[15] A: Yes.

[16] Q: And during these discussions was there ever  
[17] mention of intelligent design?

[18] A: Alan Bonsell might have mentioned it. I'm not  
[19] sure, though.

[20] Q: And do you remember anything he said about it?

[21] A: No.

[22] Q: After these meetings in June did you ever speak  
[23] to any members of the Dover community who  
[24] expressed concern over the fact that the school  
[25] board was interested in teaching creationism?

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[1] A: I had a parent phone call. I don't think it  
[2] was for creationism, though. No, I had no  
[3] phone calls on creationism, no.

[4] Q: Against or in support?

[5] A: Correct.

[6] Q: Another thing reported in both of these  
[7] articles, and they phrase it slightly  
[8] differently, but the idea that liberals in  
[9] black robes or the liberal agenda was taking  
[10] away the rights of Christians in this country,  
[11] statements attributed to Mr. Buckingham. Do  
[12] you remember him making statements to that  
[13] effect?

[14] A: Not that specifically, but I remember some  
[15] comments along those lines, with that idea, but  
[16] I don't remember those exact words.

[17] Q: And were those comments made at the June  
[18] meeting?

[19] A: That I don't remember.

[20] MR. ROTHSCHILD: This is a good time to  
[21] break.

[22] (Luncheon recess taken)

[23] BY MR. ROTHSCHILD:

[24] Q: Mr. Baksa, when you went to that lecture by  
[25] Messiah College did the speaker express any

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[1] views on the scientific theory of evolution  
[2] that's generally taught in public schools?

[3] A: About it?

[4] Q: Yes, whether there were problems with it or he  
[5] supported the teaching of it.

[6] A: No.

[7] Q: Did he indicate in any way that the scientific  
[8] theory of evolution was in conflict in any way  
[9] with any religious principles?

[10] A: No.

[11] Q: During this morning's testimony you testified  
[12] about Mr. Nilsen's instruction to you to survey  
[13] parochial schools for what textbooks they were  
[14] using. And I just want to confirm that you're  
[15] confident in that memory that it was Mr. Nilsen  
[16] who instructed you to do that.

[17] A: Yeah, I believe so.

[18] Q: And not any board member?

[19] A: Right.

[20] Q: And that he did not otherwise tell you why he  
[21] wanted you to do that?

[22] A: Correct.

[23] Q: On the subject of the Bob Jones University  
[24] textbook, which we looked at a description of  
[25] this morning, do you remember the subject of

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(1) that textbook coming up in a recent discussion  
(2) you had with members of the Dover High School  
(3) science staff?  
(4) A: No.  
(5) Q: Do you remember Mr. Eshbach asking you about  
(6) that book?  
(7) A: At a meeting I think I went to the science  
(8) department and met with them to confirm the use  
(9) of the old books. And at that meeting in  
(10) talking about the process I think somebody  
(11) brought up about the Bob Jones and my comment  
(12) was I had forgotten about that book.  
(13) Q: Did you also say in response to that topic that  
(14) you thought that Alan Bonsell had given you the  
(15) information on that book?  
(16) A: That's correct, initially that's what I was  
(17) thinking.  
(18) Q: And is that still your recollection?  
(19) A: Now I'm thinking that it wasn't Alan, but it  
(20) was my research through the home schoolers.  
(21) Q: And what caused you to change your  
(22) recollection?  
(23) A: In reviewing the production documents on my  
(24) initial with counsel that was my initial  
(25) understanding of how that document came to be,

(1) have said earlier, you've made a number of  
(2) objections as to relevance and hearsay. And if  
(3) I recall from our previous depositions, we  
(4) agreed that all objections except as to form  
(5) would be reserved. Is that your understanding  
(6) as well?  
(7) MR. GILLEN: I'm not sure what you mean by  
(8) reserved.  
(9) MR. ROTHSCHILD: In other words, your  
(10) relevance objections are preserved and so you  
(11) don't need to be making substantive objections,  
(12) those are preserved. And I'm not changing my  
(13) questions because I think we had previously  
(14) operated under the understanding if you object  
(15) to form it's my responsibility to correct it if  
(16) I think that's necessary. Other than that, all  
(17) objections are preserved.  
(18) MR. GILLEN: In other words, you're saying  
(19) I don't need to object now to preserve it for  
(20) future use?  
(21) MR. ROTHSCHILD: To preserve relevance.  
(22) You know, if you do it I'm not going to say  
(23) anything, but I think we're operating under  
(24) that understanding. Those are for trial.  
(25) MR. GILLEN: Okay, that's fine for this

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(1) but then when we talked further about that and  
(2) I thought further about that and I also talked  
(3) to my secretary, I thought I did then remember  
(4) having asked my secretary to go to a website  
(5) and look for that.  
(6) Q: Okay. And was that search suggested to you by  
(7) anybody or was that initiated by yourself?  
(8) A: Bob Jones?  
(9) Q: Yes.  
(10) A: I'm not clear whether Dr. Nilsen directed me to  
(11) research what the home schoolers were using or  
(12) whether as we were doing this research of  
(13) parochial schools that I also thought the home  
(14) schoolers would be another organization to look  
(15) at what text they're using. That I'm not clear  
(16) about.  
(17) Q: But sitting here today testifying under oath to  
(18) the best of your recollection, you don't  
(19) associate that search with Mr. Bonsell anymore?  
(20) A: Yes.  
(21) Q: That's correct?  
(22) A: I don't associate it with him, right, yes.  
(23) Q: I'm not sure I asked that question perfectly  
(24) clearly, but I think you understand it.  
(25) MR. ROTHSCHILD: Pat, one thing I should

(1) dep. And I guess we can work out an agreement.  
(2) BY MR. ROTHSCHILD:  
(3) Q: Mr. Baksa, did you have a conversation with  
(4) Jennifer Miller, a teacher at Dover High  
(5) School, in early February about the position  
(6) that the school teachers were taking as regards  
(7) the biology curriculum?  
(8) A: Yes.  
(9) Q: And what did you tell her when you had that  
(10) discussion?  
(11) A: Do you have a specific question?  
(12) Q: Well, did you tell her to be careful about  
(13) standing up to the board?  
(14) A: I warned Jen that any position that they might  
(15) take which could be judged to be insubordinate  
(16) by our council, that they should be careful  
(17) about taking a stand like that, that it's not  
(18) necessary that they put themselves in a risky  
(19) position like that.  
(20) Q: Why did you tell her that?  
(21) A: Because I felt that just personally I work very  
(22) closely with all the science teachers and I saw  
(23) them in some instances putting themselves at  
(24) risk and just as a matter of courtesy I just  
(25) wanted to communicate to them to be cautious



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[1] and to refer them that it's not necessary that  
[2] they do that.

[3] Q: Did your concern that they might be putting  
[4] themselves at risk derive from anything that  
[5] had been said to you?

[6] A: No.

[7] Q: So nothing from a member of the board or Mr.  
[8] Nilsen?

[9] A: No.

[10] Q: Is one of the things they have done that you  
[11] thought might put them at risk, does that  
[12] include the position they took that they did  
[13] not want to read the statement?

[14] A: Yes.

[15] Q: And why did you feel that that put them at  
[16] risk?

[17] A: Because I felt that they did not have — it  
[18] wasn't the statement so much as we had come to  
[19] an agreement about the procedures for  
[20] implementing the reading of the statement. At  
[21] a meeting with the teachers we reviewed how we  
[22] were going to do that and they were in  
[23] agreement with that.

[24] After that they submitted a request not to  
[25] have to do that and the superintendent

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[1] responded that he would make that accommodation  
[2] in this particular instance.

[3] What they failed to do is on a Friday they  
[4] were to distribute the forms for students to be  
[5] excused from classes without informing anybody  
[6] of that. I felt that that action was risky in  
[7] that there was an administrative understanding  
[8] for them to do so and they didn't do so and if  
[9] examined by council that could be determined to  
[10] be an act of insubordination which would put  
[11] them at risk.

[12] Q: And what about the action of opting out or  
[13] requesting to be excused from reading the  
[14] statement, did you consider that an act of  
[15] insubordination?

[16] A: No, because they made the request and we  
[17] granted it.

[18] Q: Did they explain to you why they had made that  
[19] request?

[20] A: I read a document they submitted in making that  
[21] request and in that they did put some  
[22] rationale.

[23] Q: You described to me earlier today materials  
[24] that Mr. Buckingham had given you. And let me  
[25] just make sure that I have exhausted the list.

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[1] There's the book Of Pandas and People?

[2] A: Yes.

[3] Q: There was a video?

[4] A: There were three videotapes — three CDs.

[5] Q: And do you know what those CDs were?

[6] A: One I recall the title was I think it's Icons  
[7] of Evolution. The other two titles I don't  
[8] recall.

[9] Q: Was one of them called Unlocking the Mystery of  
[10] Life, a Scientific Case for Intelligent Design?

[11] A: I don't remember.

[12] MR. ROTHSCCHILD: Pat, you tell me if you  
[13] think I'm wrong, but those are the only two  
[14] videos that have been represented to us I  
[15] believe.

[16] MR. GILLEN: I believe that you're  
[17] correct, Eric, that there were two DVDs and  
[18] then a book by the title Icons of Evolution and  
[19] Of Pandas and People. I believe that that is  
[20] the sum total of materials.

[21] A: That may be, that there were only two.

[22] BY MR. ROTHSCCHILD:

[23] Q: And I have the book Icons of Evolution here.  
[24] Is that something that was provided to you?

[25] A: Yes.

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[1] Q: This group of materials, and, you know, I  
[2] realize there may be some uncertainty about  
[3] whether there were two or three videos, were  
[4] they provided to you all at once?

[5] A: I think so.

[6] Q: And when did that occur?

[7] A: I think it occurred sometime after — around  
[8] June, 2004 or sometime after that.

[9] Q: Did you yourself review any of those materials?

[10] A: No.

[11] Q: Did you provide those materials to anybody  
[12] else?

[13] A: I gave one of the CDs to the science department  
[14] to review.

[15] Q: I assume you mean DVD?

[16] A: Yes, DVD.

[17] Q: Do you remember which one that was?

[18] A: I think it was Icons of Evolution.

[19] Q: Why among the materials that you received from  
[20] Mr. Buckingham did you choose that one to give  
[21] to the science teachers?

[22] A: That might have been — I think I remember that  
[23] first going to Dr. Nilsen and then he gave me  
[24] that one. I think I do remember talking a  
[25] little bit to Mr. Buckingham about the tape, it

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[1] would be something good to review — or the  
[2] DVD. So I think that was the only one I had at  
[3] the time to give to the teachers and then I  
[4] might have received another one at a later  
[5] time.

[6] Q: I just want to make sure the record is clear  
[7] because I thought you said you got them all at  
[8] once.

[9] A: Yeah. And now I'm thinking that I would have  
[10] only had that one, because if I had had two I  
[11] would have given both to the teachers.

[12] Q: Then what about the rest of the materials, were  
[13] those received all at once?

[14] A: I really can't recall, you know, if it was one  
[15] at a time or all at once.

[16] Q: Is it your understanding that all these  
[17] materials were given to the administration by  
[18] Mr. Buckingham?

[19] A: Yes.

[20] Q: Did he communicate where he had gotten those  
[21] materials from?

[22] A: Not positive, but I think he might have said  
[23] the Discovery Institute.

[24] Q: Are you aware that he has, in fact, been in  
[25] touch with the Discovery Institute?

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[1] A: Yes, I was aware of that.

[2] Q: Is the way you became aware of it because he  
[3] gave you materials that had been provided by  
[4] the Discovery Institute?

[5] A: I don't exactly remember, but I would assume  
[6] so.

[7] Q: Other than the materials you've described,  
[8] which are either two or three DVDs, a book —  
[9] two books, did Mr. Buckingham give you any  
[10] other materials related to the subject of the  
[11] biology curriculum or intelligent design?

[12] A: I don't think so.

[13] Q: When these materials were given to you did he  
[14] give you any instructions or recommendations  
[15] about what you should do with them?

[16] A: No.

[17] Q: Do you know whether those materials were — did  
[18] you or Mr. Nilsen provide those materials to  
[19] other members of the board?

[20] A: The book Of Pandas and People we did order  
[21] copies for the board curriculum committee and  
[22] the teachers. I don't think we ordered copies  
[23] for the entire board.

[24] Q: Other than that were any of these materials  
[25] shared with the board?

[1] A: I don't remember providing the DVDs to  
[2] individual board members.

[3] Q: And what about the Icons book?

[4] A: I don't remember providing that to individual  
[5] board members.

[6] Q: You've now described everything that Mr.  
[7] Buckingham gave you?

[8] A: As far as I remember.

[9] Q: Did any other board member give you or Mr.  
[10] Nilsen any materials relating to intelligent  
[11] design or any materials that related to the  
[12] subject of evolution?

[13] A: I know Mrs. Harkins might have given us one or  
[14] two articles. I might have gotten something  
[15] from Mr. Bonsell, I'm not sure.

[16] Q: Where would those materials be maintained if  
[17] you had received them?

[18] A: They would have been sent in the production.

[19] Q: Prior to finding out about Mr. Buckingham's  
[20] communications with them had you ever heard of  
[21] the Discovery Institute?

[22] A: No.

[23] Q: Did Mr. Buckingham tell you anything about his  
[24] communications with the Discovery Institute  
[25] other than sharing the materials he received

[1] from them?

[2] A: No.

[3] Q: Have you spoken to anybody at the Discovery  
[4] Institute?

[5] A: No.

[6] Q: At any time?

[7] A: No.

[8] (P Deposition Exhibit Number 15 marked for  
[9] identification.)

[10] BY MR. ROTHSCHILD:

[11] Q: I'm showing you a document marked as P-15  
[12] titled The Wedge Strategy. Have you ever seen  
[13] that document?

[14] A: I don't remember it.

[15] Q: You don't remember it?

[16] A: Hum-um.

[17] Q: Have you ever heard of it?

[18] A: I've heard of The Wedge Strategy only in — I  
[19] remember it being in part of the suit.

[20] Q: The complaint?

[21] A: Yeah.

[22] Q: So you said Mr. Bonsell may have given you  
[23] articles, Ms. Harkins may have given you  
[24] articles. Any other board members?

[25] A: No.

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(1) Q: Other than the Pandas book, are you aware that  
(2) any materials relating to evolution or  
(3) intelligent design were provided to the board  
(4) curriculum committee for their consideration?  
(5) A: By me?  
(6) Q: By you or did you witness anyone else providing  
(7) materials?  
(8) MR. GILLEN: Objection, vagueness.  
(9) A: Bert Spahr might have had handouts.  
(10) (Interruption)  
(11) A: Could you ask it again?  
(12) BY MR. ROTHSCHILD:  
(13) Q: Sure. Putting aside Pandas and putting aside  
(14) any sort of standard biology textbook, such as  
(15) the Miller Levine book, was the board  
(16) curriculum committee during 2004 presented with  
(17) any materials relating to intelligent design or  
(18) the subject of evolution?  
(19) A: Bert Spahr — I know Bert gave me — Mrs. Spahr  
(20) gave me some articles. I don't recall  
(21) specifically what they were. I do know that I  
(22) would have shared those with Dr. Nilsen. I  
(23) think I recall at least one of those being  
(24) shared with the board.  
(25) Mrs. Spahr at our meetings might also have

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(1) distributed articles to the board, but other  
(2) than that I don't remember seeing them get  
(3) anything.  
(4) Q: And you didn't present any materials to the  
(5) board?  
(6) A: Correct.  
(7) Q: And Mr. Nilsen didn't?  
(8) A: Well, I don't know what —  
(9) Q: That you're aware of?  
(10) A: Yeah, yeah.  
(11) Q: And you're at all the curriculum committee  
(12) meetings?  
(13) A: Yes.  
(14) Q: And what about individual members of the board?  
(15) I mean, did Mr. Buckingham hand out anything,  
(16) such as an explanation of intelligent design or  
(17) anything of that kind to the curriculum  
(18) committee?  
(19) A: I don't remember him doing that.  
(20) Q: And did any other board member do that?  
(21) A: I don't remember any of them doing that.  
(22) MR. ROTHSCHILD: Why don't we take a  
(23) break.  
(24) (Recess taken)  
(25) BY MR. ROTHSCHILD:

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(1) Q: Mr. Baksa, did anybody make any presentation to  
(2) the curriculum committee about intelligent  
(3) design? Did anybody get up and speak about it  
(4) and explain it?  
(5) A: No.  
(6) Q: I'm going to ask you similar questions for the  
(7) full board. Was the full board ever provided  
(8) any materials relating to intelligent design or  
(9) evolution other than the Pandas textbook —  
(10) actually, let me withdraw that. Was the Pandas  
(11) textbook provided to all members of the board?  
(12) A: I think I remember the Pandas book was  
(13) purchased for the teachers and the board  
(14) curriculum committee and that copies were made  
(15) available for the rest of the board to review.  
(16) Q: Putting aside Pandas and putting aside the sort  
(17) of what I'll call standard textbooks like the  
(18) Miller and Levine book, were any other  
(19) materials provided to the board prior to their  
(20) voting on the resolution on October 18th?  
(21) A: Not by me.  
(22) Q: Are you aware of any materials being presented?  
(23) A: I'm not aware of any.  
(24) Q: Do you know whether anybody made any kind of  
(25) verbal presentation to any members of the board

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(1) relating to the subject of intelligent design?  
(2) A: I'm not aware of any.  
(3) Q: So, for example, when Heather Geesy voted on  
(4) October 18th on the issue of whether to modify  
(5) the biology curriculum to mention intelligent  
(6) design, anything she would know about  
(7) intelligent design she would have had to have  
(8) learned on her own, correct?  
(9) MR. GILLEN: Objection, calls for  
(10) speculation.  
(11) A: Yeah, I wouldn't know.  
(12) BY MR. ROTHSCHILD:  
(13) Q: But you don't know of anything that she  
(14) received from any source?  
(15) A: Again, I wouldn't know that.  
(16) Q: You were involved in the preparation of the  
(17) resolution and its transmittal to members of  
(18) the board, correct?  
(19) A: Resolution —  
(20) Q: The resolution that was voted on on October  
(21) 18th to change the curriculum.  
(22) A: Okay. Could you ask that again?  
(23) Q: Yes. There was a resolution voted on October  
(24) 18th to add some language to the biology  
(25) curriculum, correct?



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(1) A: Yes.  
(2) Q: It's what we looked at at the very beginning of  
(3) the deposition.  
(4) A: Correct.  
(5) Q: And you were involved with the development of  
(6) that resolution, correct?  
(7) A: That's correct.  
(8) Q: And you were responsible for transmitting that  
(9) to all members of the board so they could see  
(10) it before they voted on it, correct?  
(11) A: Correct.  
(12) Q: And as a general matter, when issues arising  
(13) out of the curriculum committee need to be  
(14) communicated to the whole board, are you the  
(15) vehicle for doing that? Are you the person who  
(16) does that?  
(17) A: If there are issues from the board curriculum  
(18) committee?  
(19) Q: Anything that the board curriculum committee is  
(20) doing that needs to be considered by the whole  
(21) board and needs to be communicated to them,  
(22) including a recommendation for approval of a  
(23) particular curriculum, are you the person who  
(24) communicates that to the rest of the board?  
(25) A: I have at times. Sometimes it's just brought

(1) contacted them.

(2) Q: Are you aware that Mr. Buckingham contacted the  
(3) Thomas More Law Center prior to the time they  
(4) became involved as counsel to the school  
(5) district and the school board?

(6) MR. GILLEN: Objection to the preposition  
(7) of when we became involved as counsel.

(8) BY MR. ROTHSCCHILD:

(9) Q: Do you know when Thomas More was retained by  
(10) the school district to represent them in this  
(11) lawsuit?

(12) A: December, 2004.

(13) Q: I'm not asking for any knowledge about that  
(14) period going forward. What I'm asking about is  
(15) prior to that time had you become aware that  
(16) Mr. Buckingham had contacted the Thomas More  
(17) Law Center?

(18) A: I remember Mr. Buckingham, and I don't know  
(19) where, but I remember learning from him that  
(20) there was the Thomas More Law Center and that  
(21) they would be willing to defend us without  
(22) cost.

(23) Q: And can you estimate what time period that was  
(24) communicated?

(25) A: It could be anywhere from July, 2004 to

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(1) to the board by the board curriculum committee  
(2) chairperson. And as the board meets as a  
(3) whole, if they have any questions the  
(4) chairperson would be the first person to answer  
(5) and if there's some additional information he  
(6) may throw it to me to provide additional  
(7) information.  
(8) Q: And when you say it might be communicated to  
(9) the board by the committee chairman, how would  
(10) he do that, you know, in a written submission  
(11) or just bring it up in the public meeting?  
(12) A: Usually it's just brought up at the public  
(13) meeting.  
(14) Q: Did Mr. Buckingham ever report to either the  
(15) curriculum committee or the entire board his  
(16) communications with the Discovery Institute?  
(17) A: Yeah, he might have talked about the Discovery  
(18) Institute and materials he received from them.  
(19) Q: Other than describing the materials, did he  
(20) tell the board or a committee of the board  
(21) anything else about the Discovery Institute?  
(22) A: I don't remember anything else.  
(23) Q: Did he ever say why he had contacted the  
(24) Discovery Institute?  
(25) A: I don't ever remember hearing a reason why he

(1) October, 2004.

(2) Q: Did he say why he had contacted the Thomas More  
(3) Law Center?

(4) A: No.

(5) Q: Did he describe what issue the Thomas More Law  
(6) Center would need to represent the school  
(7) district about?

(8) A: Again.

(9) Q: I mean, he's talking about getting  
(10) representation from a law firm in the summer of  
(11) 2004. Did he say why he was even exploring the  
(12) question of getting representation? Nobody had  
(13) been sued, right?

(14) A: Right. He didn't explain.

(15) Q: Other than saying that this Thomas More Law  
(16) Center might represent the district, did he say  
(17) anything else about what they had communicated  
(18) to him?

(19) A: Not that I remember.

(20) Q: I'm going to mark as P-16 documents that bear  
(21) the numbers 56 through 60 from the defendants'  
(22) production. They are handwritten notes, I  
(23) think they're your handwritten notes, but I'll  
(24) ask you to confirm that. They don't appear to  
(25) be in chronological order, but that's how they

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[1] were numbered for us.

[2] (P Deposition Exhibit Number 16 marked for  
[3] identification.)

[4] BY MR. ROTHSCILD:

[5] Q: Can you just flip through the document and tell  
[6] me whether you recognize each of the pages as  
[7] bearing your handwriting?

[8] A: Yes.

[9] Q: The first page, the one that's marked Number  
[10] 56, is headed Biology Meeting, 6/24/04. Do you  
[11] know what that's referring to?

[12] A: Could I read through it?

[13] Q: Sure.

[14] A: This was a meeting of the board curriculum  
[15] committee and the science teachers and myself.  
[16] I think — at this meeting I think Dr. Peterman  
[17] might have also been there.

[18] Q: I'm going to come back to that, but turning to  
[19] the next page there's a document headed  
[20] Curriculum Committee and the date on there is  
[21] January 4th of 2004. Are these your notes  
[22] about events at a curriculum committee meeting  
[23] on that date?

[24] A: I believe these are my notes from a meeting  
[25] with Mr. Buckingham. It was just Mr.

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[1] Buckingham and me.

[2] Q: Is there a reason it's headed curriculum  
[3] committee if it was just you and Mr.  
[4] Buckingham?

[5] A: I don't know.

[6] Q: But you're confident it was just the two of  
[7] you?

[8] A: Yes, I met with him and reviewed these pages.

[9] Q: And there's notes — numbered notes here, some  
[10] of them referring to page numbers. These are  
[11] your notes, but are they taken down — things  
[12] Mr. Buckingham told you?

[13] A: Yes.

[14] Q: And is this Mr. Buckingham giving you his  
[15] characterization of items in the biology  
[16] textbook that concern him?

[17] A: Yes.

[18] Q: Did he give you any instructions or suggestions  
[19] — after communicating to you all these issues  
[20] he had with items in the textbook did he tell  
[21] you he wanted anything done or give you any  
[22] suggestions?

[23] A: No.

[24] Q: So what was the purpose of this exposition by  
[25] Mr. Buckingham?

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[1] A: Mr. Buckingham originally gave me a typed sheet  
[2] with page numbers on and a few words referring  
[3] to a section of the text and from that sheet I  
[4] couldn't determine what his specific concerns  
[5] were with those pages or those sections.

[6] So I asked to meet with him so that I  
[7] could learn of his concerns so that I could  
[8] share those with the teachers so we might be  
[9] able to prepare an answer to answer those  
[10] concerns.

[11] Q: After getting his typewritten page and then  
[12] listening to him did you believe his concerns  
[13] were in any way legitimate?

[14] A: I wasn't making judgment on his concerns. I  
[15] was simply getting them down so that I could  
[16] communicate them to the staff so that they  
[17] could answer them.

[18] Q: And did you have the staff respond to his  
[19] concerns?

[20] A: I did share these with the staff so that they  
[21] could see that and then we set the meeting up  
[22] at the end of June in which those concerns  
[23] could be addressed or any others from Mr.  
[24] Buckingham.

[25] Q: And is the handwritten notes with the Bates

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[1] stamp 56 on it the notes of that meeting?

[2] A: Yes.

[3] Q: And in that meeting did the science faculty  
[4] address the issues raised by Mr. Buckingham?

[5] A: We did address his concerns, but we didn't go  
[6] page by page. We did it more generally.

[7] Q: And how — I mean, what was communicated to Mr.  
[8] Buckingham?

[9] A: Can you be more specific?

[10] Q: Well, I'm asking you to be specific really.  
[11] He's raised a bunch of concerns. Staff gets up  
[12] and responds to them. What do they say?

[13] A: Again, the staff stressed that they don't teach  
[14] the origins of life, that they teach evolution  
[15] as change over a period of time within a  
[16] species and Mr. Buckingham was okay with that.

[17] At this meeting we were also looking at  
[18] the textbook for adoption. Mrs. Spahr  
[19] addressed some of Mr. Buckingham's concerns. I  
[20] believe Mr. Eshbach also would have answered  
[21] him.

[22] Mr. Buckingham was concerned that we were  
[23] teaching the origins of life. So they  
[24] addressed that. We talked about the —  
[25] actually, I think there's another page of my

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[1] notes with this.

[2] Q: And if you'd flip through the pages. And this  
[3] is consecutively numbered, so —

[4] A: It would be on the sheet that lists the  
[5] parochial schools and the textbooks.

[6] Q: Okay, I think I know what you're talking about.

[7] Let me see if I have a copy of that.

[8] I'm going to show you — let me actually  
[9] go ahead and make copies of it.

[10] (P Deposition Exhibit Number 17 marked for  
[11] identification.)

[12] BY MR. ROTHSCILD:

[13] Q: First of all, thank you for clarifying that,  
[14] because this is the consecutively numbered page  
[15] right before, so it makes sense. And the page  
[16] we marked as Exhibit 17, which is Bates stamped  
[17] 55, starts with the information on the survey  
[18] of biology books.

[19] Is it your recollection that that  
[20] information was presented to the curriculum  
[21] committee at this June 24th meeting?

[22] A: Yes.

[23] Q: And then you have some notes here and maybe you  
[24] can explain to me what's being communicated on  
[25] this first page of notes here.

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[1] A: The first line, evolution as change over time,  
[2] are my notes from the teachers' explanation of  
[3] what they teach, not teaching the origins of  
[4] life. I think the next note, four or five days  
[5] to cover material, is their outside estimate of  
[6] how much time they use. Icons of Evolution -  
[7] Coldwater Media, that is the DVD that was  
[8] provided. And I think either at this meeting  
[9] or later, but I think it was at this meeting  
[10] that the teachers said they would review that  
[11] DVD.

[12] My next note, Bill is making a point that  
[13] he wants us to point out flaws in Darwin's  
[14] theory.

[15] Q: And did he say why he wanted that done?

[16] A: No.

[17] Q: And in your experience as an assistant  
[18] superintendent and a participant in the  
[19] curriculum committee, did the curriculum  
[20] committee or the board or any individual member  
[21] of the board ever examine any other scientific  
[22] content being taught in the schools to  
[23] determine whether it was being properly  
[24] represented to students?

[25] A: In any other —

[1] Q: Any other scientific content besides the other  
[2] topic, besides evolution.

[3] A: In biology?

[4] Q: Or any other science.

[5] A: When the textbooks would come to the board  
[6] curriculum committee they would review the  
[7] entire textbook that would cover all the  
[8] topics.

[9] Q: And was it ever your experience that members of  
[10] the school board would criticize those  
[11] textbooks or ask that flaws in any particular  
[12] scientific concept or theory be underscored for  
[13] the students?

[14] A: I don't remember.

[15] Q: All right. Why don't we keep going on.

[16] A: The next line, I don't know what that is, Topic  
[17] 1, but it looks like we will review tape and  
[18] offer flaws if found around our content. I  
[19] think that refers to the teachers saying they'd  
[20] review it, if it fit our content and was  
[21] suitable that we would be able to use that.

[22] The next line says intelligent design  
[23] instead of creationism. I don't recall that  
[24] conversation other than now we're talking about  
[25] intelligent design.

[1] The next line, no mural ever again. Mr.  
[2] Buckingham had communicated that he was upset  
[3] that there was a mural that was once in the  
[4] science classroom that depicted the evolution  
[5] of apes to man.

[6] Q: Did he say why he was upset about that?

[7] A: No. Again, then here's Mr. Buckingham saying  
[8] that we wouldn't talk about the origin of life.  
[9] The teachers are saying it. And curriculum  
[10] okay I think is just — I think that's just my  
[11] note to myself that what the teachers were  
[12] doing in the classroom, what they said how they  
[13] were presenting evolution, that Mr. Buckingham  
[14] was okay with that.

[15] On the notes then over to the left, at  
[16] this meeting —

[17] Q: And on the left you're talking about Document  
[18] Page 56?

[19] A: 55. On the line that says intelligent design  
[20] instead of creationism, the next section that's  
[21] kind of separate —

[22] Q: Yes.

[23] A: — Mrs. Brown at this meeting said that as the  
[24] chair of the policy committee that she would  
[25] look at revising the gift policy and the

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[1] curriculum policy to reflect that any gift that  
[2] would be donated or presented into the  
[3] classroom would fit our standards and that our  
[4] curriculum would fit our standards. So that's  
[5] what this page is about.

[6] Q: Was there a discussion at this meeting that  
[7] there would be a modification or addition to  
[8] the biology curriculum?

[9] A: On 56 at the bottom it was my understanding at  
[10] the end of this meeting that Mr. Buckingham  
[11] would be okay with the approval of Miller and  
[12] Levine knowing that the teachers have  
[13] reaffirmed that they're teaching evolution over  
[14] time within the species, that they're not  
[15] teaching the origins of life, that we make  
[16] appropriate revisions to the gift policy and  
[17] curriculum policy. And at the very bottom here  
[18] we talked about putting something in the  
[19] curriculum and it was —

[20] Q: Finish your sentence out. I apologize.

[21] A: And it was my understanding when we left this  
[22] curriculum that I talked about writing  
[23] something up, it was my understanding that we  
[24] had agreed that we would mention other theories  
[25] of evolution, including, but not limited to

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[1] intelligent design.

[2] Q: Let me do this in a couple steps. When you  
[3] talk about addressing the gift policy and  
[4] curriculum policy, I don't understand what was  
[5] expected or anticipated there.

[6] A: I'm not sure about the curriculum policy. Mrs.  
[7] Brown said she would look at that. There was  
[8] changes to both policies. If I recall, the  
[9] curriculum just says to reflect some diversity  
[10] in the gift, that it matches — fits our  
[11] curriculum for our standards, the content  
[12] that's being taught in the class.

[13] The idea there was that we were looking at  
[14] language that would prevent murals that might  
[15] — artifacts in the classroom that might be a  
[16] gift that might conflict with our curriculum.  
[17] And this was an agreement from this meeting  
[18] that if these things were in place Mr.  
[19] Buckingham would feel assured that with those  
[20] things in place, plus the teachers'  
[21] reassurances, that the use of the textbook  
[22] would be okay.

[23] Q: And so when you're talking about what Ms. Brown  
[24] was looking at, it was not to change the  
[25] biology curriculum, this was related to policy

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[1] about gifts and how they — whether they were  
[2] consistent with the curriculum?

[3] A: Yes.

[4] Q: All right, got that issue. Then the separate  
[5] issue I think you're talking about is, and on  
[6] Page 56 it appears to have the notations "can  
[7] we" and then it says mention intelligent design  
[8] as an alternative in curriculum guide, mentions  
[9] other theories of evolution, including, but not  
[10] limited to intelligent design, and then it says  
[11] mention the existence of...

[12] Explain what these notes mean. Is this  
[13] somebody's suggestion? Is this just your  
[14] inquiry? What do these notes mean?

[15] A: During this meeting we talked about putting  
[16] something in the curriculum guide, what type of  
[17] language. So I thought verbally I had run this  
[18] by the members present. That mention other  
[19] theories of evolution, including, but not  
[20] limited to intelligent design, that that would  
[21] be another piece of the puzzle so the policies,  
[22] the piece in the curriculum and the adoptions  
[23] of the textbook would all work together at the  
[24] same time.

[25] The "can we" I believe refers to I did run

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[1] this language by our solicitor and got a report  
[2] back from him. So I think that's my note to  
[3] myself to make sure I check with the solicitor.

[4] Q: This suggested potential curriculum language,  
[5] was that — I mean, is that your suggestion or  
[6] is that coming from somebody else?

[7] A: I don't remember who — I remember us talking  
[8] about intelligent design, but who initiated it,  
[9] I'm not clear who first initiated it.

[10] Q: And further up the page under a "To Do" item it  
[11] says, Opinion on intelligent design. Is that a  
[12] reference to seeking an opinion from your  
[13] solicitor?

[14] A: Yes.

[15] Q: And then below it it says Bill would like both  
[16] taught so that we can — is that assure?

[17] A: Yes.

[18] Q: — assure that both and then it looks like  
[19] period, intelligent design. What's being  
[20] recorded there?

[21] A: That's just a note to myself of what I'm  
[22] hearing. So I'm referencing for my  
[23] understanding that Bill would like to see both  
[24] intelligent design taught alongside evolution.

[25] Q: And then it says so that we can assure that



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(1) both. That both what?

(2) A: I think that both are presented or something.  
(3) I didn't finish the sentence.

(4) Q: So in this meeting you have the topic of  
(5) intelligent design arising. And to your  
(6) recollection, is this the first time you're  
(7) hearing intelligent design brought up as an  
(8) issue for the biology curriculum?

(9) A: I don't really recall. It might have been  
(10) brought up earlier.

(11) Q: Do the teachers respond in any way to this  
(12) subject of intelligent design? Well, actually,  
(13) let me withdraw that for a moment and ask you,  
(14) is anybody in this meeting explaining what  
(15) intelligent design is?

(16) A: No.

(17) Q: So when the suggestion is being put out there  
(18) that you mention intelligent design in the  
(19) curriculum, in science class, nobody even knows  
(20) what it is. Is that right?

(21) A: I don't know what people's understanding of it  
(22) is.

(23) Q: It doesn't really matter, does it?

(24) A: I don't know what their understanding is.

(25) Q: What are the teachers saying about intelligent

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(1) design?

(2) A: It was my understanding after this meeting that  
(3) we were going to write language into the  
(4) curriculum that talked about other theories,  
(5) including intelligent design.

(6) And it was my understanding that — and  
(7) with that understanding there was no — that  
(8) meeting ended with us moving forward to do  
(9) these things, Casey to look at the policies, me  
(10) to look at the curriculum piece here.

(11) Can I go back to something?

(12) Q: Yes, sure.

(13) A: My notes about Bill would like both taught so  
(14) that we can assure that both are presented,  
(15) intelligent design, that was never seriously  
(16) talked about. In other words, we didn't have a  
(17) discussion with the teachers here about  
(18) teaching intelligent design. If Bill mentioned  
(19) that, it was something he mentioned, but nobody  
(20) picked on and nobody pursued.

(21) Q: And, again, you're drawing a distinction  
(22) between teaching and making aware?

(23) A: Yes.

(24) Q: In this meeting did any of the teachers speak  
(25) up in any way to give their opinions or

(1) understanding about intelligent design?

(2) A: I don't remember them doing that.

(3) Q: From your perception did they even know what  
(4) intelligent design was when it was brought up  
(5) at that meeting?

(6) A: In 2003 when Alan — Mr. Bonsell was head of  
(7) the board curriculum committee and first had  
(8) concerns about some of the texts and teaching  
(9) some alternative theories I know Mrs. Spahr  
(10) produced a lot of documents, both on  
(11) creationism and those documents also dealt with  
(12) intelligent design and I believe she shared  
(13) those with the other science teachers. Other  
(14) than that I don't know what materials they  
(15) would have looked at.

(16) Q: I thought in your earlier testimony you said  
(17) you hadn't heard of intelligent design until  
(18) sometime in 2004 and now you're saying you were  
(19) made aware of it in 2003?

(20) A: Intelligent design is mentioned in the  
(21) documents that Mrs. Spahr gave to both Mr.  
(22) Bonsell and I in 2003. However, the documents  
(23) are, you know, about an inch thick. I did not  
(24) read through all of those documents, but I  
(25) remember Mrs. Spahr later referring to those

(1) documents and referring to intelligent design  
(2) in those documents and then I remember going  
(3) back and looking through those documents  
(4) further to see what she was referencing.

(5) So it's hard for me to put a time on.  
(6) Even though I might have had the documents in  
(7) my hand, the piece of intelligence item might  
(8) not have come to my attention until later.

(9) Q: Are the documents you're referring to that Ms.  
(10) Spahr provided, were they given to counsel and  
(11) made part of production?

(12) A: Yes.

(13) MR. GILLEN: I can assure you that to the  
(14) extent we got them you have them.

(15) MR. ROTHSCHILD: You know, this is, again,  
(16) the difficulty of not knowing — I mean, you  
(17) know, you've given us a lot of stuff and I  
(18) don't know whose files it came from. I'm going  
(19) to go get the entire file and we'll see if we  
(20) can sort it out.

(21) (P Deposition Exhibit Number 18 marked for  
(22) identification.)

(23) BY MR. ROTHSCHILD:

(24) Q: You had referred to materials that Ms. Spahr  
(25) provided to you and Mr. Bonsell in 2003,

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- [1] correct?  
[2] A: Yes.  
[3] Q: And the compilation of documents I gave you are  
[4] what you're referring to?  
[5] A: I believe so.  
[6] Q: And when Ms. Spahr gave you those documents did  
[7] she say why she was giving them to you?  
[8] A: Mrs. Spahr was providing documents to me and  
[9] Mr. Bonsell to show that creationism can't be  
[10] taught in schools because she was under the  
[11] understanding that that might be what some  
[12] board members were looking to do.  
[13] Q: And why did she have that understanding, Mr.  
[14] Baksa?  
[15] A: I don't know.  
[16] Q: So we have this April, 2003 memo from Ms.  
[17] Peterman in which she reports Bertha Spahr's  
[18] understanding that Mr. Bonsell wants to teach  
[19] creationism and we have Ms. Spahr compiling  
[20] materials about the legality of teaching  
[21] creationism, but you have no idea where these  
[22] concerns about teaching creationism come from?  
[23] A: Correct.  
[24] Q: But it's not just Ms. Peterman having that  
[25] perception, it's Ms. Spahr, too, isn't it?

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- [1] A: Yes.  
[2] Q: Yet you'll understand if it strikes me as odd  
[3] that you can't explain why either of these  
[4] people have this understanding of — this  
[5] concern that the board wants creationism  
[6] taught?  
[7] A: I think Mrs. Spahr made the — hearing the  
[8] board members were concerned about only one  
[9] theory of evolution and that they wanted an  
[10] alternative theory, I think Mrs. Spahr made the  
[11] assumption that that would be creationism, but  
[12] I don't know why.  
[13] Q: Same assumption that Ms. Peterman made, right?  
[14] A: Um-hum.  
[15] Q: Yes?  
[16] A: Has Dr. Peterman assumed they wanted to teach  
[17] creationism?  
[18] Q: That's the question.  
[19] A: Yes.  
[20] Q: So Ms. Peterman made that assumption, Mrs.  
[21] Spahr made that assumption and the reporters at  
[22] the York Dispatch and the York Daily Record  
[23] made that assumption, right?  
[24] A: Well, they're two very different time periods.  
[25] After Mr. Bonsell had made — addressed —

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- [1] expressed concerns about the biology text and  
[2] only teaching one theory of evolution Mr.  
[3] Bonsell at this meeting when we received these  
[4] documents met with the science teachers.  
[5] When the teachers explained what they were  
[6] saying and doing in the classroom Mr. Bonsell  
[7] was satisfied and no longer brought any  
[8] concerns to me addressing the issue. So at  
[9] that point we weren't looking on doing anything  
[10] different in the classroom.  
[11] Q: So after receiving these materials from Ms.  
[12] Spahr there was a meeting that included you,  
[13] Mr. Bonsell and science teachers?  
[14] A: In September.  
[15] Q: And those materials were among the subject  
[16] matter of that meeting?  
[17] A: No. Mrs. Spahr handed these materials to Mr.  
[18] Bonsell and myself and the materials were not  
[19] looked at or discussed at the meeting. The  
[20] subject of the meeting was what are we teaching  
[21] in our classrooms and to answer Mr. Bonsell's  
[22] questions if he had any concerns with what we  
[23] were teaching.  
[24] Q: Who initiated that meeting?  
[25] A: I did.

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- [1] Q: And why did you initiate that meeting?  
[2] A: Because Mr. Bonsell had concerns about the text  
[3] and how we might be presenting material. And  
[4] we both were under the assumption that origins  
[5] of life was being taught when, in fact, it  
[6] wasn't being taught.  
[7] Q: Did the subject of creationism come up in that  
[8] meeting?  
[9] A: I don't think so. I remember talking to Mr.  
[10] Bonsell afterwards and he was quite — he was  
[11] surprised about this. He just wanted to talk  
[12] to the teachers. He wasn't looking at doing  
[13] anything. So he was kind of taken aback how  
[14] well armed they were to make a case against  
[15] creationism. And I don't believe we did talk  
[16] about anything other than what the teachers  
[17] were doing in class.  
[18] Q: Returning to the notes of the June 24 meeting.  
[19] We have at the bottom of the page these notes  
[20] about adding this curriculum item about  
[21] intelligent design and other theories.  
[22] At that meeting or immediately after that  
[23] meeting was a plan of action put in place to  
[24] supplement the biology curriculum?  
[25] A: At the end of this meeting I thought I had

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[1] tentative language for the curriculum that  
[2] everyone agreed on. I did have my secretary  
[3] enter that language into the draft curriculum  
[4] guide and then it was put on hold, because what  
[5] happened, in the meantime the agreement here  
[6] was that Mr. Buckingham would be okay with the  
[7] books if those two policies were looked at by  
[8] Mrs. Brown and this curriculum language came  
[9] in.

[10] Shortly after this meeting Mr. Buckingham  
[11] withdrew his approval of the books. So in my  
[12] mind everything was off the table, we were back  
[13] to square one on, okay, how do we proceed to  
[14] answer additional concerns. So I did nothing  
[15] with this.

[16] Q: And then what happened after that as regards  
[17] the purchase of the biology book and the  
[18] biology curriculum? So walk me through  
[19] chronologically.

[20] A: After that — well, there's another meeting in  
[21] July.

[22] Q: I have notes here at Page 58. Are those notes  
[23] from that meeting?

[24] A: No, that's an August, 2004 meeting, 58.

[25] Q: Do you know if there are notes from a July

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[1] meeting?

[2] A: Yeah. Oh, no, there isn't a meeting in July,  
[3] is there? The first meeting in June presented  
[4] the textbooks. I don't think there was a  
[5] meeting in July.

[6] Q: Okay. Of the curriculum committee?

[7] A: Right.

[8] Q: And just —

[9] A: But if there was a meeting there would be  
[10] notes.

[11] Q: Okay. And just to try and put, you know, some  
[12] time frames on this. August 2nd is the meeting  
[13] — the full school board meeting at which the  
[14] Miller Levine book is voted in, there's some  
[15] back and forth votes, because I think there's  
[16] only eight people there, not nine and it's four  
[17] to four and then eventually the votes change  
[18] and the Miller Levine book is voted in. Do you  
[19] remember that?

[20] A: Yes.

[21] Q: So from this June 24th meeting till August 2nd  
[22] are there any meetings of the board curriculum  
[23] committee?

[24] A: No, I don't think so.

[25] Q: In this time period is there any action on the

[1] issue of changing the biology curriculum?

[2] A: No. Then the next thing, without a July  
[3] meeting, the next thing that would have  
[4] happened is there was a meeting at the end of  
[5] August with the teachers when they came back to  
[6] discuss the use of the Panda book.

[7] And at that meeting Dr. Nilsen — I was  
[8] away from the end of July till like the middle  
[9] of August. So this meeting — the meeting for  
[10] the end of August was set up by Dr. Nilsen.

[11] And at that meeting Dr. Nilsen presented  
[12] the draft of the curriculum language from the  
[13] meeting on 6/24. And at that meeting Mrs.  
[14] Spahr expressed surprise that intelligent  
[15] design was in there.

[16] Q: And you were at this meeting, the August  
[17] meeting?

[18] A: Yes, yes.

[19] Q: Are the notes that we have here on Page 58, are  
[20] those notes from that meeting?

[21] A: Yes. So what was decided then, Mrs. Spahr was  
[22] saying, no, we didn't agree to this, this isn't  
[23] language that we would recommend. So out of  
[24] this meeting the board curriculum committee  
[25] then directed me to work with the teachers to

[1] draft new language.

[2] Q: Were you surprised that Ms. Spahr took the  
[3] position she did about the intelligent design  
[4] language?

[5] A: Yes.

[6] Q: You had understood from the June meeting that  
[7] she had signed on to that language?

[8] A: Yes.

[9] Q: Did she explain why she was opposed to that  
[10] language?

[11] A: I remember her just making a point that we were  
[12] never — teachers were never consulted about  
[13] this and I was surprised at that because that  
[14] was the topic of the June meeting.

[15] Q: Did she discuss the topic of intelligent design  
[16] substantively in terms of, you know, what she  
[17] thought about it?

[18] A: I don't believe so.

[19] Q: Did anybody at that meeting in August make the  
[20] case for why intelligent design should be part  
[21] of the curriculum?

[22] A: No.

[23] Q: And am I correct in understanding that from a  
[24] substantive level in terms of sort of  
[25] explaining why intelligent design belongs in



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[1] the curriculum, nobody has ever done that in  
[2] any meetings of the board or the board  
[3] curriculum committee?

[4] A: Nobody has —

[5] Q: Said here's why we should present intelligent  
[6] design to the students.

[7] A: Intelligent design was suggested just to be as  
[8] an example of one of the other theories,  
[9] alternative theories other than Darwin's.

[10] Q: Mr. Baksa, I could suggest that another theory  
[11] of the development of species is they were all  
[12] made out of playdough, right, I mean I could  
[13] say that, right, and you would agree with me  
[14] that that's a scientifically unsound  
[15] proposition? Is that fair?

[16] A: Are we talking about playdough now?

[17] Q: I'm not talking about the philosopher. I'm  
[18] talking about the stuff that's like clay.

[19] A: In the discussions about language that we would  
[20] use, intelligent design was brought up as when  
[21] we're making students generally aware of other  
[22] theories, intelligent design was brought up as  
[23] an example. And I don't remember presenting it  
[24] in that way that being challenged. I think  
[25] that was generally accepted.

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[1] Q: Okay. But I assume that when you're trying to  
[2] develop science curriculum you're actually —  
[3] and you're making students aware of other  
[4] theories you're trying to make them aware of  
[5] scientific theories, correct?

[6] A: Yes. And it was my understanding at the June  
[7] meeting that the teachers were okay with  
[8] language that included intelligent design. So  
[9] I would have — again, my goal was to try to  
[10] come to some agreement between the concerns of  
[11] the board and the language teachers could live  
[12] with. So I thought we — that was acceptable  
[13] to them.

[14] Q: Okay. But at that June meeting nobody  
[15] explained what intelligent design was or what  
[16] its status was in the scientific community at  
[17] large or anything like that?

[18] A: I don't remember any of them doing that.

[19] Q: And that never happened after that either,  
[20] correct, as far as you know?

[21] A: Yes.

[22] Q: I'm correct?

[23] A: You're correct.

[24] Q: And originally it was your understanding that  
[25] the science teachers were okay with this

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[1] language, but in August it turned out that  
[2] regardless of what they had said before,  
[3] they're not okay with it?

[4] A: Correct.

[5] Q: And other than Ms. Spahr indicating that the  
[6] teachers hadn't been consulted and didn't agree  
[7] with this, did she explain what's wrong with  
[8] intelligent design?

[9] A: Mrs. Spahr from the very beginning, from  
[10] documents 897, which include reference to  
[11] intelligent design, in my conversations with  
[12] Mrs. Spahr she made no distinction between  
[13] intelligent design and creationism. For her  
[14] they were synonymous.

[15] Q: And did she explain why she held that view?

[16] A: From her research that she had done she felt  
[17] that legally we would not be able to teach  
[18] intelligent design because it's just  
[19] creationism.

[20] Q: And did she express that view at either this  
[21] June board meeting or — the June curriculum  
[22] committee meeting or the August curriculum  
[23] committee meeting?

[24] A: I know she did to me. I'm not sure if she did  
[25] at either of those other meetings.

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[1] Q: In these notes from this August meeting on Page  
[2] 58 it says, Call Russell - did they say what  
[3] schools are using it.

[4] Did you make an inquiry to the solicitor  
[5] about whether other schools were using this  
[6] textbook?

[7] A: We did ask our solicitor to see if there were  
[8] any other schools using the book, to give us an  
[9] opinion on its use as a classroom set or to  
[10] distribute it to each individual student, if  
[11] there were any cases involving the teaching of  
[12] intelligent design and also asked for a  
[13] specific law firm's history.

[14] Q: And was that the Thomas More Law Center?

[15] A: I think so, yes.

[16] Q: In terms of finding out whether other schools  
[17] used it, did you get an answer to that  
[18] question?

[19] A: The only school that I found — that came to my  
[20] attention that used it was Tomball.

[21] Q: Did you also make a call to anybody at Liberty  
[22] University relating to intelligent design or  
[23] Pandas, a Dr. Gillen maybe?

[24] A: Yes. Dr. Gillen taught at Tomball.

[25] Q: In the answers to interrogatories it says that

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[1] you consulted with Dr. Gillen, believed to be  
[2] currently at Liberty University, regarding use  
[3] of Pandas and People in connection with  
[4] instruction in high school biology.  
[5] A: Right.  
[6] Q: What was the reason you called Mr. Gillen?  
[7] A: To find out how he used the Pandas and People  
[8] book in the classroom.  
[9] Q: And was the reason you called him because he  
[10] had previously been involved at Tomball?  
[11] A: Yes.  
[12] Q: So it's not because he's at Liberty?  
[13] A: Right.  
[14] Q: It's just because he's involved with Tomball?  
[15] A: That's correct.  
[16] Q: Then about three-quarters of the way down the  
[17] page there's a line that starts with Alan.  
[18] Could you tell me what — I assume that's a  
[19] reference to something Alan Bonsell said?  
[20] A: Yeah, those are my notes. Here I think Alan is  
[21] asking that something be put into the  
[22] curriculum, that teachers teach holes in  
[23] Darwin's theory and that it's not only not  
[24] flawless, but also that the teachers show the  
[25] flaws.

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[1] Q: And then what does it say after that?  
[2] A: The next line?  
[3] Q: Yes.  
[4] A: That's Sheila buying Rich lunch anyway, which  
[5] has nothing to do with anything.  
[6] Q: Who's Rich?  
[7] A: Dr. Nilsen.  
[8] Q: And what was the upshot of this meeting in  
[9] terms of developing curriculum?  
[10] A: After this meeting I was to work with the  
[11] teachers and develop a draft and then send that  
[12] to the board for their review.  
[13] Q: And was the understanding that you would  
[14] develop a draft along the lines of what Alan  
[15] Bonsell had suggested?  
[16] A: Yes.  
[17] Q: Was there any understanding of whether  
[18] intelligent design was going to be mentioned in  
[19] that curriculum — in the curriculum?  
[20] A: Well, my first step was to produce a draft with  
[21] the teachers. So I would take their draft and  
[22] show it to the board and then the board would  
[23] work on a draft of their own that included the  
[24] language. So what was going to be put in there  
[25] at this point wasn't determined.

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[1] Q: And there was no instruction or recommendation  
[2] to the board about whether intelligent design  
[3] would or would not be included?  
[4] A: Not at this meeting.  
[5] Q: Evolution is only one of the scientific  
[6] concepts that's taught to Dover High School  
[7] students, correct?  
[8] A: Yes.  
[9] Q: And there's many other concepts in biology and  
[10] there's many other concepts in other science  
[11] classes, right?  
[12] A: Yes.  
[13] Q: And evolution is generally considered a  
[14] scientific theory, correct?  
[15] A: Yes.  
[16] Q: And there are other scientific theories that  
[17] are also taught to students, correct?  
[18] A: Yes.  
[19] Q: So far as you know, does evolution — is  
[20] evolution any more — have any less status in  
[21] the scientific community or is it known to have  
[22] more problems than other scientific theories  
[23] which are taught to students in Dover?  
[24] A: I think evolution in public schools is  
[25] generally known to be controversial and

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[1] sensitive.  
[2] Q: And why is that? Is it because of scientific  
[3] deficiencies or because — well, what's your  
[4] understanding of why it's sensitive and  
[5] controversial?  
[6] A: I don't know.  
[7] Q: Do you know whether its sensitivity and  
[8] controversy arises out of the fact that it is  
[9] perceived to be inconsistent with some people's  
[10] religious beliefs?  
[11] A: Could you ask that again? I mean, I'm aware of  
[12] generally evolution being a theory in public  
[13] schools that typically is questioned by parents  
[14] and students, feeling that the theory is not a  
[15] fact and may not be the way things occur.  
[16] What I'm not aware of, what specifically  
[17] might motivate any individual to make that.  
[18] I'm just generally aware that people are  
[19] sensitive to the theory of evolution and what  
[20] it proposes.  
[21] Q: Do you have an understanding of what the word  
[22] theory means in science?  
[23] A: Roughly.  
[24] Q: And what's that understanding?  
[25] A: And that would be from my work in drafting the

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[1] statement that was read to students in the  
[2] biology classes, that a theory in science is a  
[3] general conclusion or assumption drawn after  
[4] observation.

[5] Q: And, you know, the students are being taught  
[6] it's a theory, not a fact. And that language  
[7] is not being used for any other theory that's  
[8] being taught to Dover students, correct? The  
[9] curriculum hasn't changed so that students are  
[10] told that germ theory is a theory, not a fact,  
[11] or the theory of gravity is a theory, not a  
[12] fact, or atomic theory is a theory not a fact.  
[13] Right?

[14] A: That's correct.

[15] Q: Only evolution is being singled out. Is that  
[16] fair?

[17] A: That's correct.

[18] Q: Has anybody in the board ever communicated why  
[19] of all the scientific concepts being taught to  
[20] Dover students evolution is being singled out  
[21] for the qualification that it's a theory, not a  
[22] fact?

[23] A: Not to me.

[24] Q: And in your understanding of the scientific  
[25] terms of theory and fact, could a scientific

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[1] theory ever graduate to a fact?

[2] A: I have no idea in the scientific world what  
[3] qualifies something to move from one stage to  
[4] another or even what the definition of either  
[5] of them might be in the scientific world.

[6] Q: Did any school board member ever explain why  
[7] they wanted language that it was a theory, not  
[8] a fact?

[9] A: Nothing other than they felt that that was an  
[10] erroneous presentation in the textbook, to  
[11] present it as such.

[12] Q: What was erroneous?

[13] A: That it was being presented as a fact when, in  
[14] fact, it's a theory that still hasn't been  
[15] ultimately proven to be a fact.

[16] Q: In all the page sites that school board members  
[17] called to your attention did they ever show you  
[18] text in the textbook that was adopted in which  
[19] evolution was called a fact, not a theory?

[20] MR. GILLEN: Objection to the  
[21] characterization of his testimony to the extent  
[22] it implies more than one board member did that.  
[23] Answer, Mike.

[24] A: Could you —

[25] BY MR. ROTHSCHILD:

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[1] Q: Did any school board member ever pick up this  
[2] textbook and say, look, in here it says that  
[3] evolution is a fact, not a theory or it's a  
[4] fact and a theory? Is there any text that they  
[5] pointed you to that made that assertion?

[6] A: I don't remember specific pages, but I do think  
[7] I remember both Mr. Bonsell — I know for sure  
[8] Mr. Bonsell felt that there was language in  
[9] there — I remember him saying that there was  
[10] talk about evolution without saying it's a  
[11] theory, that they were omitting the word  
[12] theory. So he felt that strengthened the case  
[13] to present it as a fact. And Mr. Bonsell would  
[14] have been looking at the edition before the  
[15] 2002.

[16] Q: But that wouldn't really matter for the  
[17] curriculum item you developed because the  
[18] edition you were using was the 2004 edition,  
[19] correct?

[20] A: In August, yes.

[21] Q: And Mr. Baksa, I'm looking at the teacher's  
[22] version of the biology textbook, but I am  
[23] fairly confident that in this respect it's  
[24] similar to the student's version, that, in  
[25] fact, the heading, as you start your study of

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[1] evolution, is Darwin's Theory of Evolution.

[2] A: Um-hum.

[3] Q: So in that respect it's not misleading the  
[4] students at all, it's in marquee and klieg  
[5] lights presented as a theory, correct?

[6] A: I have no idea.

[7] Q: Do you understand intelligent design to be a  
[8] scientific theory?

[9] A: I understand professors like Michael Behe at  
[10] Lehigh University are either proponents or  
[11] researchers for intelligent design. My  
[12] knowledge of intelligent design and the  
[13] scientific community is fairly limited. I  
[14] haven't been exploring it for a long period of  
[15] time. So I don't know that I could fully  
[16] answer that other than knowing a few  
[17] individuals who are involved in intelligent  
[18] design.

[19] Q: Do you understand that there's a distinction  
[20] between something that scientists say and  
[21] something being a scientific theory? Not  
[22] everything scientists say is a scientific  
[23] theory. You would agree with that, right?

[24] A: Okay.

[25] Q: Do you agree with that or do you just not know

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[1] one way or the other?  
[2] A: I mean, I'm not in a position to judge what the  
[3] scientific community, how they — the standards  
[4] they set and the judgments they make about  
[5] their colleagues and their research and the  
[6] status it has. I just have no knowledge of  
[7] that.  
[8] Q: And how would you — what would it take for you  
[9] to feel qualified to answer the question  
[10] whether intelligent design is a scientific  
[11] theory? What expertise would you feel you  
[12] would have to have or what resource would you  
[13] feel you would need to look to to make a  
[14] determination for yourself whether intelligent  
[15] design is a scientific theory?  
[16] A: I don't know.  
[17] MR. GILLEN: Objection. It calls for  
[18] speculation. If you can answer, do.  
[19] A: Yeah, I don't know.  
[20] BY MR. ROTHSCHILD:  
[21] Q: Do you feel that you could make a judgment  
[22] about whether intelligent design is, in fact, a  
[23] scientific theory by listening to the opinions  
[24] of the members of the Dover Area School Board?  
[25] A: I wasn't making — I wasn't asked to make a

[1] A: I believe my secretary Amy Aumen formatted it.  
[2] Q: Do you know whether Mr. Nilsen created this on  
[3] his own or with the aid of others?  
[4] A: I believe he created this in conjunction with  
[5] Thomas More.  
[6] Q: If you turn to the second page there is a  
[7] frequently asked question, What is the theory  
[8] of Intelligent Design. And it says, The theory  
[9] of intelligent design is a scientific theory  
[10] that differs from Darwin's view and is endorsed  
[11] by a growing number of credible scientists.  
[12] Do you know what the Dover Area School  
[13] District based its assertion that intelligent  
[14] design is a scientific theory on?  
[15] A: No.  
[16] Q: Going back to the development of curriculum.  
[17] Out of this August meeting you had taken on the  
[18] task to develop an edition to the curriculum  
[19] with the teachers, correct?  
[20] A: Yes.  
[21] Q: And did that, in fact, occur?  
[22] A: Yes.  
[23] Q: And in terms of who actually created the text  
[24] for it, who did that, you, the teachers or  
[25] both?

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[1] judgment. What I was asked to do was to work  
[2] with the board curriculum committee and the  
[3] whole board and the teachers to develop  
[4] language that was agreeable in the curriculum,  
[5] to find a textbook that was agreeable to both  
[6] and to develop a statement that would be read  
[7] to the students that would be agreeable to them  
[8] and that was my role.  
[9] MR. ROTHSCHILD: Can we mark this as an  
[10] exhibit, please?  
[11] (P Deposition Exhibit Number 19 marked for  
[12] identification.)  
[13] BY MR. ROTHSCHILD:  
[14] Q: Do you recognize the document we've marked as  
[15] P-19?  
[16] A: Yes.  
[17] Q: And what is it?  
[18] A: This is a news release that the district sent  
[19] to all of our residents.  
[20] Q: And who prepared this document?  
[21] A: Dr. Nilsen.  
[22] Q: Did you have any involvement with it?  
[23] A: No.  
[24] Q: Do you know if anybody else had any involvement  
[25] with it?

[1] A: I wrote a first draft and I gave it to the  
[2] teachers.  
[3] (P Deposition Exhibit Numbers 20 and 21  
[4] marked for identification.)  
[5] BY MR. ROTHSCHILD:  
[6] Q: Do you recognize the two exhibits we've marked  
[7] as 20 and 21?  
[8] A: 20 and 21? I don't have those.  
[9] Q: Exhibits 20 and 21.  
[10] MR. GILLEN: Yes, you do.  
[11] A: Oh, oh.  
[12] BY MR. ROTHSCHILD:  
[13] Q: And are these the product of your work with the  
[14] science department on developing a modification  
[15] to the biology curriculum?  
[16] A: Yes, but not entirely.  
[17] Q: And what's missing?  
[18] A: There's another teacher draft.  
[19] Q: And chronologically here where does that  
[20] teacher draft fall, before September 20th,  
[21] before September 21st?  
[22] A: It would be a draft created on October 18th.  
[23] Q: October 18th, okay. So up till — sorry, I'll  
[24] back up. Am I correct that the documents we're  
[25] looking at as 20 and 21 are identical except



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(1) for one is sent to the board curriculum  
(2) committee and one is sent to the full board?  
(3) A: Yes.  
(4) Q: And up to this point, September 20th and 21st,  
(5) was what we have marked as Exhibits 20 and 21  
(6) the completed product of your work with the  
(7) science teachers?  
(8) A: Yes.  
(9) Q: And the language that I think is relevant here  
(10) is at the bottom of Pages 29 and 32, students  
(11) will be made aware of gaps in Darwin's theory  
(12) and of other theories of evolution. Who  
(13) crafted that text?  
(14) A: I wrote that originally as a draft to get going  
(15) on this and then the teachers reviewed that and  
(16) then sent that back as a recommendation, that  
(17) they had no further changes to that.  
(18) Q: How did you come up with that language?  
(19) A: From our June 24th meeting.  
(20) Q: Am I correct in understanding that in the  
(21) course of these discussions the board members  
(22) expressed a view that the presentation of  
(23) evolution before these changes were made was  
(24) not balanced?  
(25) A: Mr. Bonsell initially believed we were teaching

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(1) the origins of life and only teaching what  
(2) might be attributed to the theory of evolution  
(3) according to Darwin. And in that sense there  
(4) was nothing else being presented. However,  
(5) when he learned that we weren't doing that he  
(6) was fine with what was being presented in  
(7) class.  
(8) The balance came — it came in that there  
(9) was no balance in the — they had concerns  
(10) about the balance that they might have found  
(11) lacking in the textbook and so the curriculum  
(12) language was just to solidify what teachers had  
(13) already reported to us that they did normally  
(14) and prior to any concerns by the board.  
(15) Q: So that was the intent of this language here,  
(16) to memorialize in the curriculum what the  
(17) teachers were representing they were already  
(18) doing?  
(19) A: Yes.  
(20) Q: Did you personally feel that there was anything  
(21) wrong or unbalanced about the way teachers were  
(22) presenting evolution prior to having to develop  
(23) this curriculum item?  
(24) A: Again, my role was to, you know, work between  
(25) the board and the teachers to develop both the

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(1) curriculum language, the adoption of the  
(2) textbook and the student statement. I wasn't  
(3) making — I was trying to answer the board's  
(4) concerns and trying to answer the teachers'  
(5) concerns. I wasn't making judgment about  
(6) instruction.  
(7) Q: And had Mr. Nilsen ever expressed any view that  
(8) there was anything wrong with the way teachers  
(9) were presenting evolution prior to this whole  
(10) issue arising?  
(11) A: No, I don't remember him saying that.  
(12) Q: And is it fair to say the teachers had no  
(13) problems themselves with their own presentation  
(14) of evolution?  
(15) A: That's correct.  
(16) Q: So to the extent there were issues, it was  
(17) coming solely from the board?  
(18) A: That's correct.  
(19) Q: You drafted this language here and it includes  
(20) the language of other theories of evolution.  
(21) What did you understand that to mean?  
(22) A: I took that from my conversations with the  
(23) teachers initially. I asked them — when Mr.  
(24) Bonsell had questions I asked them do we  
(25) present other theories, do we tell students

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(1) about gaps and they said, yeah, we do.  
(2) I didn't ask them to explain to me what  
(3) other theories they were offering, but the fact  
(4) that they said they were doing that, then that  
(5) became part of the language.  
(6) Q: So you have no idea what they meant by other  
(7) theories of evolution?  
(8) A: That's correct, other than there are  
(9) contemporaries of Darwin's that are mentioned  
(10) in the book as other theories of evolution.  
(11) Q: Was it your understanding that that was what  
(12) the teachers meant by presenting other theories  
(13) of evolution?  
(14) A: No, I don't know. That's just me making a —  
(15) that's just from my reading I know that. That  
(16) wasn't a conversation I had.  
(17) Q: Lamarck, for example, is a contemporary who had  
(18) a different theory of evolution than Darwin,  
(19) correct?  
(20) A: I'll take your word for it it was Lamarck. I  
(21) do know that there are other contemporaries  
(22) mentioned in the textbook.  
(23) Q: Did the teachers ever affirmatively say this is  
(24) what we mean when we say we're presenting other  
(25) theories of evolution?



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[1] A: I don't recall the teachers giving a list of  
[2] specific others or mentioning. I do know at  
[3] the September meeting with Mr. Bonsell and the  
[4] science department and teachers that the  
[5] teachers did mention that there are other  
[6] theories or beliefs out there.

[7] I know Mr. Lenker for one talked about  
[8] prefacing his teaching of evolution by  
[9] mentioning creationism. In what form he did, I  
[10] don't really remember.

[11] Just in general I remember the teachers  
[12] felt that they were — if the board was  
[13] concerned that they weren't mentioning other  
[14] theories of evolution that they felt, indeed,  
[15] they were doing that.

[16] (Recess taken)

[17] BY MR. ROTHSCHILD:

[18] Q: Mr. Baksa, was the next thing that happened  
[19] after the recommendation for the change to the  
[20] curriculum from the teachers and yourself a  
[21] meeting of the board curriculum committee?

[22] A: When I sent the draft to — the teachers' draft  
[23] to the board curriculum committee and the full  
[24] board I received different recommendations for  
[25] changes from Mr. Buckingham, Mr. Bonsell and

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[1] Mrs. Brown.

[2] (P Deposition Exhibit Numbers 22 and 23  
[3] marked for identification.)

[4] BY MR. ROTHSCHILD:

[5] Q: I'm going to mark as Exhibits 22 and 23 two  
[6] documents titled Board Curriculum Council  
[7] Meeting, October 7th, 2004, Proposed Curriculum  
[8] Changes, one of which differs from the other  
[9] because it has some handwritten marks on it.

[10] Do you recognize these two documents, Mr.  
[11] Baksa?

[12] A: Yes.

[13] Q: And describe the one that's got the Bates stamp  
[14] 35 and describe what it is.

[15] A: This is my preparation of the recommendations  
[16] from the staff and the board curriculum  
[17] committee members. And I called this meeting  
[18] so that the board curriculum committee could  
[19] look at the staff's recommendations and the  
[20] recommendations of other board curriculum  
[21] committee members and decide on what would be  
[22] the final language that they would like to see  
[23] included.

[24] Q: And these were recommendations that you had  
[25] received from Mr. Bonsell, Ms. Brown and Mr.

[1] Buckingham in advance of this meeting?

[2] A: Yes.

[3] Q: And is this document something you — was there  
[4] actually a meeting on October 7th?

[5] A: Yes.

[6] Q: And was this document handed out?

[7] A: Yes.

[8] Q: And who attended this meeting?

[9] A: Mr. Bonsell, Mr. Buckingham and Mrs. Harkins.

[10] Q: And was Mrs. Harkins a member of the curriculum  
[11] committee at that time?

[12] A: Mrs. Harkins was board president. And  
[13] typically a board president would join  
[14] meetings.

[15] Q: I believe I'm correct in saying that Mrs.  
[16] Harkins was not board president at that time.  
[17] In fact, I was at the meeting in which she was  
[18] voted board president, which was quite a bit  
[19] after. Is that —

[20] A: Oh, Alan — is that right?

[21] MR. GILLEN: I believe Mr. Rothschild is  
[22] right also in that Alan Bonsell was president  
[23] of the board at this time.

[24] A: Then it would be — the board curriculum  
[25] committee members would be Mrs. Brown, Mr.

[1] Buckingham and Mrs. Harkins and Alan would be  
[2] there as board president.

[3] BY MR. ROTHSCHILD:

[4] Q: You do believe Mrs. Harkins was on the board  
[5] curriculum committee?

[6] A: Yes, correct.

[7] Q: You listed Bonsell, Buckingham and Harkins.  
[8] Was Mrs. Brown not at this meeting?

[9] A: Correct.

[10] Q: And was anybody else at this meeting besides  
[11] the three individuals you named and yourself?

[12] A: No.

[13] Q: No faculty?

[14] A: No.

[15] Q: Is there a reason why faculty was not included  
[16] in this meeting?

[17] A: The purpose of the meeting was for the board to  
[18] come to some consensus on their variations of  
[19] their curriculum piece. The board already had  
[20] in hand the recommendation of the staff.

[21] Q: From the document that is Bates stamped 35,  
[22] which is Exhibit Number 22, it looks like Mr.  
[23] Bonsell changed the administration's  
[24] recommendation only to add the word problems.  
[25] Is that fair?

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[1] A: Yes.  
[2] Q: And Mr. Buckingham added the terminology  
[3] intelligent design, correct?  
[4] A: Yes.  
[5] Q: And then am I correct in understanding from —  
[6] A: Let me back up.  
[7] Q: Sure, go ahead.  
[8] A: Mr. Buckingham would have seen the draft  
[9] language that included intelligent design at  
[10] the August meeting and it may be — and that  
[11] was the language that I drafted from the June  
[12] 24th meeting.  
[13] So it may be that Mr. Buckingham was just  
[14] looking at that draft and saying let's just  
[15] keep that, but you're right, that's the version  
[16] that he's supportive of.  
[17] Q: But when you say that, you don't know that  
[18] because he told you that, you're just  
[19] speculating?  
[20] A: Yes.  
[21] Q: So you have these versions here. Then on  
[22] Exhibit Number 23, which is Bates stamped 36,  
[23] there's handwriting added to Mr. Bonsell's  
[24] entry, including, but not limited to  
[25] intelligent design. Is that your handwriting?

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[1] A: Yes.  
[2] Q: And why did you write that there?  
[3] A: This was the board's final recommendation of  
[4] the language that they would like to see.  
[5] Q: The language that you handwrote on to Mr.  
[6] Bonsell's entry?  
[7] A: Yes.  
[8] Q: And so that was ultimately what the board  
[9] curriculum committee recommended, the language  
[10] that is under Mr. Bonsell's name in Exhibit 23?  
[11] A: Yes.  
[12] Q: Describe the discussion at this meeting that  
[13] resulted in that language being selected.  
[14] A: It was very short. I passed out these proposed  
[15] changes. They looked at the entries. And  
[16] within a matter of minutes I think there was a  
[17] decision — I think Mr. Buckingham wanted to  
[18] make sure intelligent design was in there. So  
[19] I think there was an agreement.  
[20] Mrs. Harkins did not have a separate  
[21] language — draft of language that she was  
[22] proposing. So what ended up happening is the  
[23] language from Mr. Buckingham and Mr. Bonsell  
[24] were married and Sheila was fine with that. So  
[25] within a matter of minutes the board had

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[1] finalized language that they would like to see.  
[2] Q: And did you express any views about that  
[3] language?  
[4] A: No.  
[5] Q: Did you communicate the faculty's views on that  
[6] language or what you thought the faculty's  
[7] views would be on that language?  
[8] A: Well, if you look at the recommendations, the  
[9] recommendation from the administration and the  
[10] staff is A.  
[11] Q: Right.  
[12] A: So the board was — at this was looking at that  
[13] recommendation and deciding that they wanted to  
[14] go with their language.  
[15] Q: Right. And did you say to them, hey, look, you  
[16] know, what you're putting in here is different  
[17] than what our science faculty, the science  
[18] professionals in this community are  
[19] recommending, did you say anything like that to  
[20] them?  
[21] A: Not at this meeting.  
[22] Q: Did you say anything like that to them at any  
[23] time?  
[24] A: At the board — before the October 18th board  
[25] meeting where this language would be voted on

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[1] Dr. Nilsen and I recommended that we accept the  
[2] teachers' language that did not include  
[3] intelligent design because we felt it was  
[4] important that the teachers support language  
[5] that they would be subject to in their  
[6] curriculum.  
[7] Q: When did this discussion occur?  
[8] A: Prior to the board meeting.  
[9] Q: That day?  
[10] A: No, within a half hour, hour of the board  
[11] meeting.  
[12] Q: Prior to the board meeting?  
[13] A: Yes.  
[14] Q: On October 18th?  
[15] A: Yes.  
[16] Q: Okay. That's what I meant by that day. That  
[17] same day as the board meeting?  
[18] A: That same day, yeah.  
[19] Q: And tell me what was said to the board and how  
[20] they responded.  
[21] A: Well, again, what I had said before, Dr. Nilsen  
[22] and I said that we recommend that the — at  
[23] that meeting the board had Enclosure 11A and  
[24] 11B. And at that meeting prior to the board  
[25] meeting Enclosure 11C was distributed.

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[1] Q: Okay.

[2] A: Enclosure 11C was developed in the afternoon of  
[3] October 18th. So it was a second  
[4] recommendation by the teachers to see if the  
[5] board would be agreeable to — if the board  
[6] would not be — the teachers were already aware  
[7] of the language the board was proposing.

[8] They were aware that the board was doing  
[9] more with their language than they had  
[10] originally proposed and that without something  
[11] in between it would be the language as proposed  
[12] out of this curriculum committee, with the  
[13] board curriculum committee. So the teachers  
[14] agreed to additional language that resulted in  
[15] Enclosure 11C.

[16] Q: And why don't we just make sure the record is  
[17] clear. I'm going to pass out and mark as  
[18] Exhibit 24 an October 13th, 2004 memorandum  
[19] from you to the board which I think has the  
[20] enclosures that you are describing.

[21] (P Deposition Exhibit Number 24 marked for  
[22] identification.)

[23] BY MR. ROTHSCHILD:

[24] Q: When you're referring to Enclosures 11A, B and  
[25] C, are you referring to the documents that you

[1] before — the current language that the board  
[2] curriculum committee is recommending will  
[3] probably be approved and theirs would probably  
[4] not be approved and is there something else  
[5] that they might be able to compromise with that  
[6] they would still be okay short of Enclosure A.

[7] The result of that question to them  
[8] resulted in Enclosure C, which then the  
[9] administration then was saying if the board did  
[10] not like Enclosure B, then our next  
[11] recommendation would be the administration and  
[12] the teachers are recommending Enclosure C.

[13] And it's that what I communicated and Dr.  
[14] Nilsen communicated prior to the October 18th  
[15] board meeting.

[16] Q: Okay. So until October 18th the teachers had  
[17] no idea that curriculum language that included  
[18] intelligent design was going to be put to a  
[19] vote?

[20] A: No, I'm pretty sure I met with the board  
[21] curriculum committee on October 7th and I'm  
[22] pretty sure the next day I took that new  
[23] language over to them.

[24] Q: So what you were communicating to them on  
[25] October 18th was your understanding that the

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[1] find as part of this memorandum?

[2] A: Can I look at the documents?

[3] Q: Sure, take your time.

[4] Q: Go ahead, you can answer the question.

[5] A: What was the question?

[6] Q: The question was are these the enclosures you  
[7] were referring to, 11A, B and C?

[8] A: Yes.

[9] Q: And before I go back to my question about what  
[10] you said to this board before they voted, why  
[11] don't you tell me what communications you had  
[12] with the teachers, if any, about the language  
[13] that was being recommended by the board  
[14] curriculum committee.

[15] A: On the afternoon of the 18th I took the board  
[16] curriculum committee language to the teachers  
[17] and I'm not sure if I had —

[18] Q: On the 18th, the day of the vote?

[19] A: Yes. And I'm not sure if I had the note  
[20] origins of life will not be taught. That was a  
[21] suggestion from Mr. Bonsell. I know I talked  
[22] to them about that. I'm not sure if I took a  
[23] draft with that language over to them or not.

[24] But the question I had before them was  
[25] would they be — that the current language

[1] board curriculum committee meetings — board  
[2] curriculum committee's language was going to be  
[3] voted in?

[4] A: Yes.

[5] Q: But they already knew about the language prior  
[6] to that?

[7] A: Yes.

[8] Q: What was their reaction when they first heard  
[9] about the language being advocated by the board  
[10] curriculum committee?

[11] A: Again, they objected to intelligent design  
[12] being included in the curriculum because, as I  
[13] later learned as they presented to the board  
[14] and spoke, their fear is that the language  
[15] making students aware of, they interpreted that  
[16] as — and this is Jen Miller's remarks at a  
[17] school board meeting, that that language might  
[18] be telling her that she has to teach that and  
[19] they didn't feel, again, equating intelligent  
[20] design with creationism, that they would be  
[21] able to do that legally.

[22] Q: And then did the teachers communicate anything  
[23] else in reaction to finding out about the board  
[24] curriculum committee's language?

[25] A: No. I mean, other than Mrs. Spahr repeatedly

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[1] would say doesn't the board know they can't do  
[2] that. You know, she told me that many times,  
[3] feeling that her position was that intelligent  
[4] design wasn't tenable in the curriculum.

[5] Q: Do you have an understanding about whether  
[6] intelligent design is the same as creationism?

[7] A: I don't believe it's the same from the little I  
[8] read.

[9] Q: And when you're talking about the little you  
[10] read, what are you referring to?

[11] A: Of the documents that might have come across my  
[12] desk in this two-year period.

[13] Q: Do you have an understanding of whether the  
[14] concept of intelligent design is religious in  
[15] nature?

[16] A: From reading the book of Peoples and Pandas I  
[17] would say it's not religious.

[18] Q: And you've read all the way through it?

[19] A: Yes.

[20] Q: Do you have an understanding of who the  
[21] intelligent designer is?

[22] A: That's why I think it's not religious, because  
[23] intelligent design, from what I've read,  
[24] doesn't point to anyone in particular or thing  
[25] in particular.

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[1] Q: Do you have a familiarity with the term  
[2] creationism or do you have an understanding  
[3] what that term means?

[4] A: If you want to define it for me —

[5] Q: No, I really want to know what your  
[6] understanding of the term is.

[7] A: My understanding of creationism is that it is  
[8] the — creationism is the belief that the world  
[9] came into existence according to the literal  
[10] reading of the Bible Genesis.

[11] Q: And that's the sum and substance of your  
[12] understanding?

[13] A: Yes.

[14] Q: Have you ever heard of the term special  
[15] creation?

[16] A: No.

[17] Q: I interrupted the line of questioning I was on  
[18] before, which was what exactly did you and Mr.  
[19] Nilsen say to the board on October 18th in  
[20] recommending the teachers' version or one of  
[21] the teachers' versions of the change in the  
[22] curriculum?

[23] A: We were recommending Enclosure 11C because we  
[24] felt that it was important that the teachers  
[25] were okay with that and we've come a long way,

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[1] they've agreed to the language in the  
[2] curriculum, they agreed to the book Of Pandas  
[3] and People listed as a reference, they agreed  
[4] to have it as a reference, and that with the  
[5] board not having any concerns with what is  
[6] going on in the classroom that there was no  
[7] necessity to go the next step and enforce  
[8] intelligent design to be in there when that  
[9] would just create a situation in which the  
[10] teachers who have to deliver it don't agree  
[11] with.

[12] Q: Did you say anything else about why you were  
[13] recommending Version C?

[14] A: I don't remember anything else.

[15] Q: And who said that, you or Mr. Nilsen?

[16] A: At one time or another probably we both  
[17] reiterated our position.

[18] Q: Were all members of the board present when you  
[19] made that presentation?

[20] A: I don't remember if they were all there.

[21] Q: Did any member of the board respond to what you  
[22] and Mr. Nilsen were saying?

[23] A: I know Mr. Bonsell spoke. I can't remember  
[24] exactly what he said. I know Mr. Buckingham  
[25] spoke and Mr. Buckingham felt that it was very

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[1] important that intelligent design not be left  
[2] out of the curriculum and recommended that  
[3] Enclosure 11A be the language that the board  
[4] adopted.

[5] Q: Did he explain why it was important that  
[6] intelligent design be part of the curriculum?

[7] A: The only thing I remember Mr. Buckingham saying  
[8] is that he felt that even though teachers were  
[9] saying that they were offering other theories  
[10] of evolution in the class to students that he  
[11] felt that it's important that to assure that  
[12] that happens down the road or with any new  
[13] teacher that that language be included in the  
[14] curriculum.

[15] Q: And did he say anything else?

[16] A: I don't remember anything else.

[17] Q: Then the curriculum came to a vote, correct?

[18] A: Yes.

[19] Q: Was there any statements made in support of the  
[20] board curriculum committee's version of the  
[21] curriculum change before that vote occurred?

[22] A: I know Dr. Nilsen called me to the podium to  
[23] give the administration's recommendation and I  
[24] recommended to the board Enclosure C — or  
[25] Enclosure 11C.



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[1] And I believe I remember Mrs. Spahr  
[2] talking and Mrs. Miller talking. I can't say  
[3] whether it was before the vote or after the  
[4] vote.  
[5] Q: Did anybody who was advocating a vote for  
[6] version I guess it was 11A get up and speak in  
[7] support of it?  
[8] A: No, I don't remember anyone saying anything for  
[9] 11A.  
[10] Q: In articles after the resolution was voted on  
[11] Angie Yingling has been quoted as saying that  
[12] members of the board suggested that she would  
[13] be atheist or unChristian if she didn't vote  
[14] for the intelligent design resolution. Did you  
[15] observe any remarks of that kind?  
[16] A: Yeah.  
[17] Q: And Casey Brown has been quoted as saying that  
[18] school board members asked her whether she is  
[19] born again. Did you observe anything like  
[20] that?  
[21] A: No.  
[22] Q: Are you aware that the Discovery Institute  
[23] released a press release criticizing Dover for  
[24] passing the resolution it did?  
[25] A: Yes.

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[1] Q: And how did you become aware of that?  
[2] A: I don't remember that.  
[3] Q: Did you participate in any discussions with  
[4] anybody at the school district or school board  
[5] about the Discovery Institute taking that  
[6] position?  
[7] A: I might have talked to Dr. Nilsen about it.  
[8] Q: And describe your conversation.  
[9] A: I really don't recall specifics of that  
[10] conversation. I just know that we did  
[11] recognize that they had this press release, but  
[12] I don't really recall specifically what we  
[13] talked about.  
[14] Q: Are you aware that members of the Discovery  
[15] Institute communicated with the school district  
[16] directly about their curriculum change?  
[17] A: Yes.  
[18] Q: Have you participated in any of those  
[19] discussions?  
[20] A: I was at a meeting with a representative from  
[21] the Discovery Institute.  
[22] Q: And when did that meeting occur?  
[23] A: I guess prior to — sometime after the October  
[24] 18th I think.  
[25] Q: Was it prior to or after the lawsuit was filed?

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[1] A: Prior to.  
[2] Q: Where did that meeting occur?  
[3] A: At the administration office conference room.  
[4] Q: Who was there?  
[5] A: I was, Dr. Nilsen, Mr. Bonsell and I believe  
[6] Mr. Buckingham and Mrs. Harkins.  
[7] Q: Who participated on behalf of the Discovery  
[8] Institute?  
[9] A: I forget his name.  
[10] Q: Was it someone named Seth Cooper?  
[11] A: Yes.  
[12] Q: Do you know who initiated the meeting?  
[13] A: No.  
[14] Q: Was the discussion about the legality of  
[15] teaching of the curriculum or the pedagogical  
[16] merits of the curriculum?  
[17] A: The discussion, Discovery Institute felt that  
[18]  
[19] MR. GILLEN: Wait. To the extent you  
[20] understood you were receiving legal advice from  
[21] Mr. Cooper with the board meeting, as a board  
[22] for the purpose of getting that legal advice,  
[23] don't disclose that information.  
[24] BY MR. ROTHSCHILD:  
[25] Q: I think I asked you the question, the

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[1] foundation for that, was the discussion of the  
[2] board curriculum in the nature of did you  
[3] discuss whether the change was legal or did you  
[4] discuss the scientific or pedagogical merits of  
[5] the change of the board curriculum?  
[6] MR. GILLEN: You can answer that.  
[7] A: Legal.  
[8] BY MR. ROTHSCHILD:  
[9] Q: Only legal?  
[10] A: Yeah, I would say so, yeah.  
[11] Q: Do you have any knowledge of how this meeting  
[12] was arranged?  
[13] A: No.  
[14] Q: Do you know who arranged the meeting?  
[15] A: No.  
[16] Q: When this meeting began, and I'm going to tread  
[17] carefully here. So, you know, try an answer  
[18] just my limited question. We'll take it step  
[19] by step. Who began the discussion?  
[20] A: I think it was Mr. Cooper.  
[21] Q: Was there any part of that discussion that  
[22] included discussion that the Discovery  
[23] Institute would represent the school district  
[24] in any litigation over the policy?  
[25] MR. GILLEN: Eric, based on the



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(1) information that I have, I'm going to instruct  
(2) him not to answer with respect to — I mean, I  
(3) don't think there's any question that that  
(4) meeting was one in which the communications  
(5) took place for the purpose of securing legal  
(6) advice.

(7) Based on that understanding of the board  
(8) members that I have received and what Mr.  
(9) Bonsell (sic) has said today I'm going to  
(10) instruct him not to answer as to what they  
(11) discussed.

(12) MR. ROTHSCHILD: Can you represent to me,  
(13) Patrick, that the school district sought legal  
(14) advice from the Discovery Institute?

(15) MR. GILLEN: Yes, absolutely.

(16) MR. ROTHSCHILD: Can you represent to me  
(17) who did that?

(18) MR. GILLEN: I know that Mr. Buckingham  
(19) did as head of the board curriculum committee.  
(20) I believe that others did as well, Mr. Bonsell,  
(21) for example. I think they all had the sense,  
(22) particularly at this meeting, that they were  
(23) meeting for the purpose of receiving his legal  
(24) advice.

(25) MR. ROTHSCHILD: You know, you've produced

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(1) documents, and which I appreciate, in which Mr.  
(2) Cooper is reaching out to the board. And you,  
(3) obviously, recognize those are not privileged,  
(4) that's why you've produced those. And he's  
(5) basically reaching out to communicate his views  
(6) to the board. You know, I'm concerned here  
(7) that this meeting was of that same nature.

(8) MR. GILLEN: I understand your concern.

(9) As you've indicated, to the extent I think  
(10) that's a fair characterization, I have produced  
(11) them. I do understand that he was, like a  
(12) public interest lawyer, acting in public  
(13) interest, soliciting them for the purpose of  
(14) providing advice on initial public importance,  
(15) but I do believe he was providing legal advice  
(16) and that's the basis for my objection.

(17) MR. ROTHSCHILD: Are you taking the  
(18) position that if Mr. Cooper volunteered legal  
(19) advice, his legal opinion on the legality of  
(20) this curriculum, that that's protected even if  
(21) nobody asked him to give that legal advice?

(22) MR. GILLEN: I'm taking the position that  
(23) if Mr. Cooper in his capacity as a lawyer  
(24) offers legal advice and if the board accepts it  
(25) and communicates with him for the purpose of

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(1) obtaining the advice he's offered, that is a  
(2) privileged communication.

(3) It's my understanding that this meeting  
(4) and other communications were of that nature  
(5) and that the board was, in fact, or the board  
(6) members acting in their official capacity were  
(7) accepting his offer of legal advice and  
(8) communicating with Mr. Cooper as a lawyer for  
(9) the purpose of obtaining it. That's the basis  
(10) for my objection.

(11) MR. ROTHSCHILD: We're going to have to  
(12) pursue this, obviously, with other witnesses  
(13) who made these arrangements.

(14) MR. GILLEN: Understood.

(15) (P Deposition Exhibit Number 25 marked for  
(16) identification.)

(17) BY MR. ROTHSCHILD:

(18) Q: Mr. Baksa, do you recognize the document I've  
(19) mark as Exhibit 25?

(20) A: Yes.

(21) Q: Is this an e-mail exchange between you and a  
(22) gentleman named Brad Neal?

(23) A: Yes.

(24) Q: Have you seen this document in the last two  
(25) weeks?

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(1) A: No.

(2) Q: Who is Brad Neal?

(3) A: Brad Neal is a social studies teacher at the  
(4) high school.

(5) Q: His e-mail to you was sent October 19th.  
(6) That's the day after the resolution was passed,  
(7) correct?

(8) A: Yes.

(9) Q: In his first sentence he says, In light of last  
(10) night's apparent change from a standards driven  
(11) school district to "the living word driven"  
(12) school district, and it goes on. What did you  
(13) understand him to mean by change from standards  
(14) driven to living word driven?

(15) A: I don't know.

(16) Q: You had no understanding?

(17) A: I would be speculating. What I take from the  
(18) e-mail is that he's making a joke of the  
(19) board's adoption of the language from the vote  
(20) on October 18th. I don't know. I didn't speak  
(21) to him about what he meant by this e-mail.

(22) Q: You understood him well enough to respond and  
(23) say be careful what you ask for, right?

(24) A: Yes.

(25) Q: And you told him you had been given a copy of

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(1) The Myth of Separation by David Barton to  
(2) review from board members. Why did you call  
(3) his attention to that fact in response to this  
(4) e-mail?

(5) A: Generally, his e-mail speaks to the involvement  
(6) of the board in the curriculum. And, you know,  
(7) the board -- what I was saying back to Mr. Neal  
(8) is that social studies is next year and Mr. --  
(9) I believe it was Mr. Bonsell has already  
(10) expressed concerns about aspects of the social  
(11) studies curriculum.

(12) At this point Mr. Neal is aware of that.  
(13) Dr. Nilsen and Mr. Bonsell did meet with Mr.  
(14) Hoover and Mrs. Neal and discuss aspects of the  
(15) curriculum and I believe Mr. Hoover was  
(16) familiar with the book and had read the book  
(17) already.

(18) Q: Was it Mr. Bonsell who gave you -- you said you  
(19) were given this book by the board members. Who  
(20) were the board members who gave it to you?

(21) A: I think it was just Mr. Bonsell.

(22) Q: And did he say anything to you when he gave you  
(23) this book?

(24) A: Actually, it might have been given to -- I  
(25) don't remember him saying anything to me and it

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(1) actually might have been given to Dr. Nilsen  
(2) first and he gave it to me. I don't remember.  
(3) Q: And in your e-mail you say feel free to borrow  
(4) my copy to get an idea of where the board is  
(5) coming from. At the time you sent this e-mail  
(6) had you examined the book?

(7) A: Just skimmed it.

(8) Q: And what did you mean by, you know, get an idea  
(9) of where the board is coming from?

(10) A: Just that reading the book might help explain  
(11) what concerns the board might have in our  
(12) existing social studies curriculum.

(13) Q: I mean, having skimmed the book and heard from  
(14) Mr. Bonsell, what did you understand those  
(15) concerns to be?

(16) A: I never met with Mr. Bonsell about this.

(17) Q: Do you know what The Myth of Separation is  
(18) about?

(19) A: In a vague sense.

(20) Q: What's that?

(21) A: That the separation of church and state might  
(22) never have been the clear intent of our  
(23) founding fathers. I couldn't explain it more  
(24) than that.

(25) Q: And you said that there's since been meetings

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(1) with you and Mr. Bonsell and Mr. Hoover and Mr.  
(2) Neal?

(3) A: No, I was never at those meetings.

(4) Q: Okay. So you were not part of them. Did  
(5) anybody report to you what was said in them?

(6) A: I think Dr. Nilsen gave me like a one-page  
(7) topic summary of what they discussed. I don't  
(8) recall anything else. I know I didn't sit down  
(9) with Dr. Nilsen and talk at great length about  
(10) the meeting.

(11) Q: What do you remember from the document  
(12) summarizing the meeting?

(13) A: I don't remember it.

(14) Q: Is that a document you still have in your  
(15) possession?

(16) A: Yeah, it might be.

(17) MR. ROTHSCILD: I request the production  
(18) of that document.

(19) MR. GILLEN: Sure.

(20) BY MR. ROTHSCILD:

(21) Q: Is it your understanding from receiving The  
(22) Myth of Separation and getting a report on the  
(23) views of Mr. Bonsell that Mr. Bonsell is trying  
(24) to change the social studies curriculum to  
(25) present a view about the founding that is more

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(1) religious in nature than is currently being  
(2) taught?

(3) MR. GILLEN: Objection, calls for  
(4) speculation.

(5) A: I haven't had that conversation with Mr.  
(6) Bonsell. The only thing, when I first came on  
(7) in 2002/2003 I know Mr. Bonsell did hand me a  
(8) copy of one of George Washington's -- his  
(9) inaugural address or his speech and did express  
(10) concern that he wanted to make sure that in our  
(11) curriculum our students were being taught about  
(12) our founding fathers and were being taught  
(13) about the Constitution. I don't remember  
(14) having a conversation with Mr. Bonsell about  
(15) separation of church and state.

(16) BY MR. ROTHSCILD:

(17) Q: Was there something specific in the inaugural  
(18) address he was calling your attention to?

(19) A: No, not that I recall.

(20) Q: So it's just he wanted the inaugural address  
(21) read, whatever it said?

(22) A: I don't know that he wanted it read. It was  
(23) just a document he gave me that he felt was  
(24) important.

(25) Q: And is that something you still have in your

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[1] possession?

[2] A: I might have that.

[3] MR. ROTHSCILD: Request the production of  
[4] that as well.

[5] BY MR. ROTHSCILD:

[6] Q: Mr. Baksa, if the school board said to you we  
[7] want to change the biology curriculum so that  
[8] in addition to teaching Darwin's theory of  
[9] evolution we read to the students from the Book  
[10] of Genesis, as a professional administrator and  
[11] educator what do you feel that your  
[12] responsibilities are in reacting to that?

[13] A: Probably what I would tell them in that  
[14] hypothetical case is that I would run something  
[15] like that by our solicitor and get his opinion  
[16] back to them.

[17] Q: And would you independently — well, let me  
[18] withdraw that. Is it your view that that would  
[19] be legal?

[20] A: In an instance where a board member is  
[21] proposing something that might be legal or not  
[22] legal I would be reluctant to give my legal  
[23] opinion to a board member. I would let the  
[24] solicitor give that to the board member.

[25] Q: What about from a pedagogical perspective, if

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[1] they're presenting this as another version of  
[2] the origin of life or the origin of species in  
[3] a biology class, in your view is that  
[4] appropriate?

[5] A: Is what appropriate?

[6] Q: If, for example, they change the curriculum to  
[7] present to the students that there's Darwin's  
[8] theory of evolution, but another theory of how  
[9] life originated can be found — another  
[10] scientific theory of how life originated can be  
[11] found in the Books of Genesis.

[12] A: Again, I would take that suggestion from them  
[13] and run that by the solicitor and return the  
[14] opinion of the solicitor to them.

[15] Q: I'm not asking for the legality of it. I'm  
[16] asking is that, in your view, appropriate  
[17] science education?

[18] A: And what I'm trying to explain is if presented  
[19] with that hypothetical situation that's how I  
[20] would proceed to answer a board's concern or a  
[21] board's suggestion.

[22] Q: You would only take steps to determine the  
[23] legality, but not whether it has merit as a  
[24] scientific proposition?

[25] A: You first asked me about the legality of it.

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[1] If there was a question of legality I would

[2] always defer to the solicitor.

[3] Q: And now I'm asking you — I then changed it and

[4] I said pedagogically, in terms of teaching

[5] these kids, it's going to be science class and,

[6] you know, you're going to tell them Darwin's

[7] got a theory of evolution and origins and we're

[8] going to talk to you about that, but we also

[9] want to tell you about the scientific theory of

[10] how life originated that can be found in the

[11] Books of Genesis.

[12] A: Well, knowing what I do of the cases with

[13] creationism, if that were presented to me by a

[14] board member, knowing those legal backgrounds,

[15] I would suggest, again, that we get a legal

[16] opinion whether that would be something we

[17] could do.

[18] Q: Would you also take steps to consult your

[19] science faculty about whether this is something

[20] that ought to be taught as scientific subject

[21] matter regardless of whether it's legal or not?

[22] A: My first step would be legal. If the opinion

[23] came back that you can't do that that would end

[24] the matter. If the board pursued something,

[25] then that might be a next step to furnish other

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[1] opinions for the board to consider.

[2] MR. ROTHSCILD: Let's take a quick break

[3] and I'll try and wrap up.

[4] (Recess taken)

[5] BY MR. ROTHSCILD:

[6] Q: Mr. Baksa, do you know who donated pandas to  
[7] the school?

[8] A: No.

[9] Q: How did you find out they were being donated?

[10] A: Dr. Nilsen told me.

[11] Q: And did you ask him who they were being donated  
[12] from?

[13] A: No.

[14] MR. ROTHSCILD: Let me mark this as an  
[15] exhibit.

[16] (P Deposition Exhibit Number 26 marked for  
[17] identification.)

[18] BY MR. ROTHSCILD:

[19] Q: Do you recognize that document?

[20] A: Yes.

[21] Q: And those are your notes?

[22] A: Yes.

[23] Q: And do you know when they're from?

[24] A: This would have been prior to October 18th.

[25] Q: And what is recorded in those notes?

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[1] A: The conversation with Mr. Buckingham is about  
[2] any changes that he would be recommending for  
[3] the curriculum.

[4] Q: What specifically is written there?

[5] A: The first line says, Wants language requiring  
[6] teachers to use the books, take them out and —  
[7] I have use from them, but I'm sure I mean teach  
[8] from them.

[9] The next line is okay with mentioning  
[10] intelligent, which is intelligent design. So I  
[11] think that's his confirmation of Enclosure 11A.

[12] And then I think his justification explanation  
[13] about wanting the teachers to use the book is  
[14] that he reported to me that he felt there were  
[15] expectations from those who donated the books  
[16] to use the books.

[17] Q: And when he communicated that to you did he  
[18] communicate who those people were?

[19] A: No.

[20] Q: And did you ask?

[21] A: No.

[22] Q: And I take it when he's referring to teaching  
[23] — take them out and teach from them, he's  
[24] referring to the Pandas books?

[25] A: Yes.

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[1] Q: And did you respond to that suggestion by Mr.  
[2] Buckingham?

[3] A: No.

[4] Q: And what became of that?

[5] A: That was resolved with having the Pandas books  
[6] placed in the library as a reference.

[7] Q: Did Mr. Buckingham ever express again his  
[8] desire that they actually be taught from, for  
[9] example, at the October 7th meeting or at any  
[10] other meeting?

[11] A: At one — I don't know whether it was a  
[12] meeting, but I do remember Mr. Buckingham  
[13] requesting — oh, we did review that in my  
[14] notes, Mr. Buckingham requesting that the books  
[15] be used, if it matches content in the Miller  
[16] Levine and that the books be looked at side by  
[17] side.

[18] Q: That was earlier than this telephone  
[19] conversation, correct?

[20] A: I think so.

[21] Q: After you had this telephone conversation did  
[22] he pursue this anymore with you or with the  
[23] curriculum committee or with the board that he  
[24] actually wanted the books taught from?

[25] A: I don't remember him doing that.

[1] Q: You referred earlier in the testimony to  
[2] Michael Behe. Is that someone you've met?

[3] A: No.

[4] Q: Have you read anything he's written?

[5] A: No.

[6] (P Deposition Exhibit Number 27 marked for  
[7] identification.)

[8] BY MR. ROTHSCHILD:

[9] Q: Mr. Baksa, do you recognize this document?

[10] A: Yes.

[11] Q: Looking at the first page marked 975 there's a  
[12] message note. Whose handwriting is that?

[13] A: My secretary's.

[14] Q: And who is Miriam Parsons?

[15] A: Someone who read about us and is a writer  
[16] herself.

[17] Q: And she called you, I take it?

[18] A: Yes.

[19] Q: And you called her back?

[20] A: Yes.

[21] Q: And describe the conversation you had with her.

[22] A: In general she just communicated to me that  
[23] she's a, just from my notes, a writer and is  
[24] supportive of teaching Bible science and  
[25] offered her services to in-service our teachers

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[1] or come to talk to us if we wanted to.

[2] Q: Did she say why she was calling you?

[3] A: Just because she read about us in the  
[4] newspaper.

[5] Q: Read what about you in the newspaper?

[6] A: I don't know.

[7] Q: When she used the words Bible science did she  
[8] describe what she meant by that?

[9] A: I did that now. I'm just looking at my notes.  
[10] It says Bible has huge degree of science. I

[11] just vaguely remember her either writing a book  
[12] that describes how to use the Bible to teach  
[13] science or her — I think I remember her saying  
[14] she has talked to groups about that.

[15] Q: And how did you respond to the information she  
[16] was sharing with you and the offers she made to  
[17] you?

[18] A: I listened.

[19] Q: Did you ask any questions?

[20] A: No.

[21] Q: Did you say, well, that's not useful for us  
[22] here or that's not what we're doing or anything  
[23] to that effect?

[24] A: No.

[25] Q: Did you ask her how she had come to the



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(1) understanding that her expertise in creationism  
(2) and Bible science would be useful for you?

(3) A: No.

(4) Q: During the course of this testimony you've  
(5) described how Mr. Bonsell has expressed some  
(6) issues or concerns relating to the social  
(7) studies curriculum. Has any individual board  
(8) member or the board as a whole identified any  
(9) other curriculum issues which they have  
(10) concerns or issues about?

(11) A: I would say that differently. I don't know  
(12) that Mr. Bonsell reviewed the social studies  
(13) curriculum. He just thought it was important  
(14) that in a curriculum the Constitution is taught  
(15) and the founding fathers are taught.

(16) Q: And he also, apparently, sent this book, Myth  
(17) of Separation, to the administration?

(18) A: I believe he gave that to Dr. Nilsen, yes.

(19) Q: Other than that and what we've discussed about  
(20) the biology curriculum can you think of any  
(21) other aspects of curriculum where the board or  
(22) individual board members has expressed  
(23) concerns, raised issues or made suggestions  
(24) about how the curriculum should be changed?

(25) A: Again, Mrs. Brown did have concerns with the

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(1) family consumer science curriculum, the  
(2) foundations of that curriculum. In fact, at  
(3) one point Mrs. Brown reviewed the entire  
(4) program studies for the high school and made  
(5) suggestions that we return to some former  
(6) curriculum courses that had been deleted in the  
(7) current years.

(8) Q: What about limiting the question to current  
(9) members of the board, other than what you've  
(10) already described, do you have any further  
(11) answer to my question?

(12) A: What's the question?

(13) Q: The same question that you responded with  
(14) discussion about Mrs. Brown, have the board or  
(15) individual board members raised concerns or  
(16) issues about any aspect of any curriculum item  
(17) or made suggestions about how the curriculum  
(18) should be added to, modified or subtracted  
(19) from?

(20) A: I can only think of Mr. Bonsell and social  
(21) studies.

(22) MR. ROTHSCILD: Those are all my  
(23) questions. Do you have any, Pat?

(24) MR. GILLEN: I just have a few.

(25) EXAMINATION

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BY MR. GILLEN:

(1) Q: Eric was just asking about subjects in the  
(2) curriculum. I wanted to ask you, has any board  
(3) member expressed concerns about the curriculum  
(4) touching on sex education?

(5) A: Yes. That — yes.

(6) Q: Okay. I thought that perhaps at this moment in  
(7) time you weren't remembering that.

(8) I think this is clear from your testimony,  
(9) but I just want to ask you for the record. At  
(10) any point in —

(11) A: If I could interrupt. There is a current board  
(12) member, Mrs. Geesy, who did express concern  
(13) about inhalants in that curriculum piece. It's  
(14) the health curriculum.

(15) Q: At any point in this process did any board  
(16) member direct you to take steps to implement  
(17) the teaching of creationism?

(18) A: No.

(19) MR. GILLEN: I have no further questions.

EXAMINATION

BY MR. ROTHSCILD:

(20) Q: Which board members raised issues about the  
(21) teaching of sex education?

(22) A: When I came to the Dover district the math

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(1) curriculum and the health curriculum were under  
(2) review and they were implemented in the year I  
(3) started, 2002/2003.

(4) So those concerns were communicated to me  
(5) by Dr. Nilsen as having come to him during his  
(6) role as assistant superintendent in bringing  
(7) those curriculums to review and revision. So I  
(8) don't — I'm not aware of particular board  
(9) members' names who raised the issues.

(10) Q: Were you aware of the nature of the issue?

(11) A: Generally it has to do with contraceptives and  
(12) abstinence and how much information you should  
(13) give students about that information for them  
(14) to make good decisions.

(15) Q: And do you have an understanding of what the  
(16) board members who raised concerns, what their  
(17) preference was?

(18) A: No, I don't, I don't remember that.

(19) Q: The question I'm going to ask you right now I'm  
(20) not trying to solicit any communications that  
(21) happened with counsel or in the presence of  
(22) counsel. So putting any communications that  
(23) fit that description aside, has there been any  
(24) discussion — are you aware of any discussion  
(25) by the board or among board members about



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[1] changing the intelligent design — about  
[2] reversing the curriculum change to biology that  
[3] was put in effect on October 18th? Have board  
[4] members said we shouldn't do this, we should  
[5] change it back?  
[6] A: The only board member I'm aware of that — and  
[7] that's from — actually, I believe it's from  
[8] newspaper reports. I don't think I heard it.  
[9] But I think Mrs. Yingling has made statements  
[10] to that effect.  
[11] Q: Other than that you're not aware of anybody  
[12] who's done that?  
[13] A: Right.  
[14] Q: And has there been any discussion of that  
[15] nature that you've participated in, just any  
[16] discussion to reconsider that curriculum?  
[17] A: No.  
[18] MR. ROTHSCHILD: I have no further  
[19] questions.  
[20] MR. GILLEN: Nor do I.  
[21] MR. ROTHSCHILD: Thank you very much.  
[22] (Whereupon, the deposition concluded at  
[23] 4:50 p.m.)  
[24]  
[25]

[1] COMMONWEALTH OF PENNSYLVANIA )  
[2] COUNTY OF DAUPHIN )  
[3] I, Susan D. Kashmere, Reporter and Notary  
[4] Public in and for the Commonwealth of Pennsylvania  
[5] and County of Dauphin, do hereby certify that the  
[6] foregoing deposition was taken before me at the time  
[7] and place hereinbefore set forth, and that it is the  
[8] testimony of  
[9] MICHAEL BAKSA  
[10] I further certify that said witness was by  
[11] me duly sworn to testify the whole and complete truth  
[12] in said cause; that the testimony then given was  
[13] reported by me stenographically, and subsequently  
[14] transcribed under my direction and supervision; and  
[15] that the foregoing is a full, true, and correct  
[16] transcript of my original shorthand notes.  
[17] I further certify that I am not counsel  
[18] for or related to any of the parties to the foregoing  
[19] cause, or employed by them or their attorneys, and am  
[20] not interested in the subject matter or outcome  
[21] thereof.  
[22] Dated at Harrisburg, Pennsylvania, this  
[23] 15th day of March, 2005.  
[24]  
[25] Susan D. Kashmere, RPR  
Reporter - Notary Public  
My commission expires  
April 18, 2008.

**Lawyer's Notes**

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March 9, 2005

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